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ROYAL COMMISSION OF INQUIRY INTO CERTAIN
DEATHS AT THE HOSPITAL FOR SICK CHILDREN AND
RELATED MATTERS.

Hearing held
8th floor
180 Dundas Street West
Toronto, Ontario

The Honourable Mr. Justice S.G.M. Grange

P.S.A. Lamek, Q.C.

E.A. Cronk

Thomas Millar

Footen: X-Team
Hunt (cont'd)
Shinley
Percival
Kitching
Tobias

Commissioner

Counsel

Associate Counsel

Administrator

Transcript of evidence
for

SEPTEMBER 14, 1983

VOLUME 33

OFFICIAL COURT REPORTERS

Angus, Stonehouse & Co. Ltd.,
14 Carlton Street, 7th Floor,
Toronto, Ontario M5B 1J2

595-1065



ROYAL COMMISSION OF INQUIRY INTO CERTAIN
DEATHS AT THE HOSPITAL FOR SICK CHILDREN
AND RELATED MATTERS.

Hearing held on the 8th Floor,
180 Dundas Street West, Toronto,
Ontario, on Wednesday, the 14th
day of September, 1983.

- - - -

THE HONOURABLE MR. JUSTICE S.G.M. GRANGE - Commissioner
THOMAS MILLAR - Administrator
MURRAY R. ELLIOT - Registrar

- - - -

APPEARANCES:

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E. CRONK)	
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	General of Ontario (Crown
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	Children
F. KITELY	Counsel for the Registered
	Nurses' Association of Ontario
	and 35 Registered Nurses at
	The Hospital for Sick Children



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APPEARANCES: (Continued)

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G.R. STRATHY) E. FORSTER)	Counsel for Phyllis Trayner - R.N.A.
N. GOODMAN	Counsel for Mrs. M. Christie - R.N.A.
J.A. OLAH	Counsel for Janet Brownless - R.N.A.
S. LABOW	Counsel for Mr. & Mrs. Gosselin, Mr. & Mrs. Gionas, Mr. & Mrs. Inwood, Mr. & Mrs. Turner, Mr. & Mrs. Lutes and Mr. & Mrs. Murphy (parents of deceased children)
F.J. SHANAHAN	Counsel for Mr. & Mrs. Dominic Lombardo (parents of deceased child Stephanie Lombardo); and Heather Dawson (mother of deceased child Amber Dawson).
W.W. TOBIAS	Counsel for Mr. & Mrs. Hines, (parents of deceased child Jordan Hines).



INDEX of WITNESSES

<u>Name</u>	<u>Page No.</u>
<u>FOWLER</u> , (Dr.) Rodney S. (Resumed)	6237
Cross-Examination by Mr. Hunt (Cont'd)	6241
Cross-Examination by Mr. Strathy	6267
Cross-Examination by Mr. Percival	6334
Cross-Examination by Ms. Kitely	6338
Cross-Examination by Mr. Olah	6403
Cross-Examination by Mr. Tobias	6414



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--- On commencing at 10:00 a.m.

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MR. SCOTT: Mr. Commissioner, are we ready to begin?

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THE COMMISSIONER: Yes, I think almost. We haven't a witness yet.

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THE WITNESS: I am here.

THE COMMISSIONER: Yes. All right.

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DR. RODNEY S. FOWLER, Resumed

THE COMMISSIONER: What would you like to say?

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MR. SCOTT: Mr. Roland made an objection at the end of the day and then abandoned the proceedings, and told me to come up this morning and explain the objection to you.

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THE COMMISSIONER: I see. Go ahead.

MR. SCOTT: The concern arises out of cross-examination that Mr. Hunt is conducting of Dr. Fowler when he referred yesterday at page 6231 to Dr. Rowe's evidence in which Dr. Rowe had said that by the time of the Saturday afternoon meeting with the coroner he was concerned about the Miller situation, at a time when the serum levels were not, of course, available.

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You will recall, Mr. Commissioner --

THE COMMISSIONER: Yes.



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MR. SCOTT: -- that the serum levels of Miller were not available until I think about 8 o'clock that evening.

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THE COMMISSIONER: Yes.

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MR. SCOTT: I simply think it fair to put to the witness not only Dr. Rowe's evidence as my friend has, but Dr. Rowe's evidence on re-examination at page 4864. Actually it begins at 4862, but the significant portion is at page 4864 where Dr. Rowe in effect explains the answer he gave to Mr. Hunt explicitly in the following way:

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"Q. Now, we know that some hours later, I am not quite certain how many hours later, the digoxin serum postmortem readings were done;"
Now when we say we know it was later, we are saying later than the coroner's meeting and at 8 o'clock of that Saturday night. " ... is that correct?"

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THE COMMISSIONER: Do we know that they were done and we know that they were received back then? What was the time that they were actually done? Do we know that?

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MR. SCOTT: We don't, or I don't.

THE COMMISSIONER: Probably - however that doesn't matter. Yes?



A.3

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MR. SCOTT: They were received back
after 8 o'clock.

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THE COMMISSIONER: That is right.

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MR. SCOTT: And the question is:

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"Q. Now, we know that some hours
later ... "

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that is after the meeting in the afternoon -

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" ... I am not quite certain how many
hours later, the digoxin serum post-
mortem readings were done; is that
correct?"

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Now perhaps the question should have been "were
reported back; is that correct?"

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"A. Yes.

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"Q. And was the coroner called after
that?

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"A. Yes.

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"Q. So when you said to Mr. Hunt 'I
presume that that should have been
the case', that is that you should
have called the coroner right after
Baby Miller died, is that correct or
is it not correct?

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"A. Well, it is using a bit of hind-
sight, I think.

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"Q. All right. What is the fact in the Miller case that would have made it a coroner's case in your opinion?

"A. The finding of the level of digoxin in the blood."

Now what I say, Mr. Commissioner, is that in fairness to this witness when Mr. Hunt puts the previous excerpt from Dr. Rowe's evidence to Dr. Fowler he should also put to him the explanation that Dr. Rowe gave in re-examination: otherwise re-examination is pointless and I have no role to play.

THE COMMISSIONER: No, no. Well, all right. Now it has been put to him I think so that problem is solved.

MR. HUNT: No, it is not solved as far as I am concerned.

THE COMMISSIONER: No, no. Mr. Scott needn't solve your problem. All he has to do is tell the witness exactly what all the evidence was; now you go ahead and put your question.

MR. HUNT: As long as it is clear to you, Mr. Commissioner, that they are talking about two different things here. One is his concern about the death and the other is reportability. He changed his mind overnight on the reportability aspect of it,



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but we heard nothing from him on re-examination about his concern, and that is all I am dealing with.

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THE COMMISSIONER: Yes. All right.

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CROSS-EXAMINATION BY MR. HUNT (CONTINUED):

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Q. All right, sir, before we pick

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up on that again, I want to go back for a moment to Baby Pacsai.

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You said yesterday, sir, that there were two reasons for you reporting the Pacsai death to the coroner, and they were, No. 1, the father's reaction, No. 2, the fact that you agreed the death was sudden and unexpected.

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I am suggesting to you, sir, that yesterday is the first time in all of your evidence that you have suggested there was any reason other than the father's reaction that caused you to report that death to the coroner.

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I put to you yesterday some of your evidence at the preliminary inquiry into the charges against Susan Nelles, and there is an additional portion which I perused overnight which I want to put to you because you there very specifically talk about what you said to the coroner, and I ask you to just listen to these questions and answers.

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They are again in Volume 19, Mr. Commissioner.

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MR. SCOTT: What page?

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MR. HUNT: Beginning at page 58, and
I will start about line 3.

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Q This is evidence given on
February 17th, 1982, before His Honour Judge Vanek,
and you were asked during cross-examination, and this
is in reference to Mr. Pacsai:

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"Q Well, how would you have
expected him to react from what you
knew of him?

10

11

"A. I don't know him.

12

"Q All right.

13

"A. He --

14

"Q I am sorry.

15

"A. He behaved in an unusual way
compared to all the other fathers who
have just lost their children.

16

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"Q But you didn't know whether that
was usual for Mr. Pacsai or not
because you didn't know him long
enough?

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"A. No, that is right.

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"Q And yet despite the short time
you knew him you did draw some
inference from his demeanor, didn't
you?

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A.7

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"A. Correct.

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"Q. You thought he had abused his
own child?

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"A. I didn't say that at all.

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"Q. Well, you reported that to the
coroner?

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"A. No. I phoned the coroner and
told the coroner that the father was
reacting in an unusual way to the
death of his child and the coroner
said that this occurs, occasionally
occurs, but it was worthwhile for him
to look into the situation.

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"Q. Well, the note I have of your
evidence is that 'I was concerned
about the safety of the nurses. I
felt it was a highly unusual reaction
of a parent to a child who had died.
I was concerned because that might -
that may be - that may be, might be a
case of child abuse.' Were you
concerned about that?

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"A. Of course. I wouldn't have
phoned the coroner if I didn't think
there was a possibility and you have

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A.8

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"the evidence right there. I said

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it might be or whatever you want to

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put, but I didn't say it was."

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Now, sir, do you recall being asked
those questions and giving those answers?

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A. Yes, I do.

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Q. You agree with me there is not
the slightest suggestion there that there was any

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thought in your mind that this death should be

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reported to the coroner because it was sudden and

11

unexpected?

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A. The reason I reported --

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Q. Do you agree with me, first of
all, there was no suggestion in that evidence that
you reported this death because of anything to do with
the sudden and unexpected nature of it?

15

16

A. No. That evidence doesn't say
that, but I think - I have to amplify the fact that
this was an unexpected death and that this naturally
is a death that is of concern apart from this
altogether, and that it was the reaction of the
father that precipitated phoning the coroner at that
time.

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We were in the process of doing a
postmortem examination to see whether - to see what

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the appearance of the heart was, and had the father not had that reaction I would probably not have reported the death at that time to the coroner.

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Q. So your evidence yesterday, sir, to the effect that there were two reasons why it was reported, would it be fairer to say that that perhaps involves a little bit of hindsight?

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A. Like many, many things in this whole Commission Inquiry.

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THE COMMISSIONER: I think the whole world. I don't think you need to confine it to us.

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MR. HUNT: Q. Now, sir, I take it to be fair to Mr. Pacsai there was no actual evidence of any child abuse whatsoever?

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A. There was absolutely nothing to suggest that at all.

Q. It was simply his reaction?

A. His reaction and as the evidence says I did not know the father at all and this was just an observation that I made that it was a very unusual sort of event in my experience.

Q. Are you prepared to say that his expression of grief at that news would also be consistent with the realization by him of a very sudden and tragic loss of his son?



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A. Well, I have encountered many such situations in my medical practice, and this is an unusual reaction even in that situation.

Q. But we can say that it is consistent with that type of an expression of grief?

A. It is more exaggerated.

Q. Maybe more --

MR. SCOTT: Let him answer.

MR. HUNT: Q. It is more exaggerated but are you now, looking back on it, satisfied that it was consistent with a father who has just been told of the sudden loss of his son?

A. No, it is not consistent with that in my experience. It is an abnormally - it is an acute reaction to that situation.

Q. Well --

A. In my experience in cardiology.

Q. If it turns out that Baby Pacsai was in fact murdered and Mr. Commissioner finds that, I suppose we can hardly be critical of the father's reaction?

A. I am not making a value judgment at all. I am just reporting what happened when I was there. I am not attempting to value it at all.

Q. Now, sir, with respect to



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Allana Miller where we were yesterday when we left off, we had reached the point where you had indicated that you learned of the death on Saturday morning, March 21st.

A. Yes.

Q. You had a discussion with Dr. Rowe prior to going over to the meeting with the coroner in the afternoon?

A. I don't know that I had a discussion. I notified him of the death of the child, but that is all I can remember. I don't know what was said.

Q. Well, I appreciate you can't recall what was said --

A. Yes.

Q. -- but I think you indicated yesterday you and Dr. Rowe had certainly talked about the fact of Baby Miller having died?

A. Yes. Well, I notified him of the event, and I presume that we had some comments about it.

Q. All right. You indicated as well that whatever, while you didn't recall what you said, that it was your impression that at the time you spoke to him about it he shared the same view that you did about the death?



A.12

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A. Yes.

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Then at page 4251:

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"Q. I think he indicated that going into that meeting, Saturday afternoon, you were at the least very concerned about the Miller situation, at that time you didn't know what the levels were?

"A. I think that is true."

"Certainly, I suppose next to Pacsai and Estrella, it --

(that is the Miller death):

" -- had to be a matter that was near the top of the concerns that you had going into that meeting?

"A. Oh, yes, absolutely."

Now, sir, do you agree that you shared



A.13

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that concern that Dr. Rowe has expressed that he had
about the Miller death going into the meeting
Saturday afternoon?

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A. I didn't have a concern that
there was anything unusual about the death until the
digoxin level was available. Naturally I thought it
was a natural death because of her pathology.

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Q All right. Yesterday in
response to some questions from Mr. Lamek, and I am
referring to Volume 32 at page 6150, you were asked
this question and gave this answer:

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"Q. Do you recall whether at that
meeting -- "
that is the meeting with the coroner in the afternoon.

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A. Yes.

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Q " ... you or anyone from the
Hospital mentioned the fact that
Allana Miller had died early that
morning?

"A. Well, I am surprised that we
didn't, but there seems to be a fair
bit of evidence to suggest that that
death was not discussed at that
meeting."

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Now, sir, if in fact nobody was concerned about the



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Miller death going into the meeting because it was
a natural death, why the surprise that it wasn't
mentioned?

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A. Because with the Pacsai
problem going on it is surprising in retrospect that
we didn't discuss that just because of the concern
about Pacsai. But obviously we didn't.

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Q. Well, because of the concern
about Pacsai there was no onus on anybody to discuss
all of the deaths that had occurred at the Hospital?
Is that fair to say?

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A. Yes.

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Q. Well, if there was nothing
unusual in your mind or anyone else's mind about the
Miller death going into the meeting, then there would
be no cause for any surprise that it wasn't discussed?

16

17

A. Well, I was rather surprised
that it wasn't discussed for the reason I gave.

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Q. All right. Well, in fairness
you don't recall your discussions of that morning
with Dr. Rowe? You do recall or you are able to say
you are surprised it wasn't discussed. Does that
perhaps indicate that during that morning there was
concern about the Miller death and the fact or the
relationship of digoxin to her death?



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A. No, there certainly wouldn't be.

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I mean if we had thought that this was due to an

4

overdose of digoxin it would have been immediately

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reported to the coroner, and we didn't realize that

6

until the level came back.

7

Q. Well, other than the relation-

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ship of digoxin to Allana Miller's death, there would

9

be nothing that would cause you surprise at it not

10

being discussed at that meeting, would there?

A. Yes, that is true.

11

Q. I take it you yourself were

12

surprised that she had had a cardiac arrest?

13

A. Not particularly surprised

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because she was a very ill child who was so sick that

15

she required an operation and her operation was being

16

advanced because she was so sick. So I wasn't

17

unusually surprised that she died while waiting for

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this operation. And in retrospect when we know what

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the post mortem results are, then we realize that it

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is even more serious than we had thought during life.

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Q. Well if you had been surprised at the time she died would that perhaps have been further reason why you would have had concern that should be discussed with the Coroner?

A. Yes, of course. If I had thought there was anything unusual about the death of this child with very serious heart disease I would naturally have been in touch with the Coroner immediately.

Q. I want to refer you again to your evidence given at the preliminary inquiry into the charges against Miss Nelles. We are again referring to Volume 19, page 38, evidence given on Wednesday, February 17th, 1982 and beginning at about line 13, and this is during your examination in chief by Mr. Magee:

"Q. All right. From what you observed of Allana Miller and knew of her background, were you surprised or not to hear of her sudden death?

A. Well she had a complex cardiac disease, she had signs suggestive that she had pneumonia on top of that, also some increase in congestive failure and she is a



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"small baby. So it is conceivable that she might die but things seemed quite stable in the afternoon and I was rather surprised that she had an arrest."

Now, do you recall being asked this question and giving that answer?

A. Yes, I must have said that if it is in the transcript.

MR. SCOTT: I want to note that the Doctor deals with it also at page 35 at considerable length, I don't want to read it necessarily, but just for the record.

MR. HUNT: Well my friend will have his opportunity to re-examine if there is anything there I have unfairly stated, and I am sure he will deal with that.

THE COMMISSIONER: Yes. If you are going to put to him what he said a couple of years ago, or a year and a half ago, perhaps you have to put to him everything he said. However, I don't think he is going to press it.

MR. HUNT: In my quick look at pages 35 through to page 38 I see nowhere else where the Doctor is asked the precise question as to his surprise



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at the death.

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THE COMMISSIONER: I think Mr. Scott,
4 what page did you say?

5

MR. SCOTT: Page 35, I don't intend
6 to make an argument of it, but the Doctor has discussed
7 in the preliminary inquiry the condition of Allana
8 Miller for some six or seven pages.

8

THE COMMISSIONER: Yes.

9

MR. SCOTT: And my friend, as he is
10 perfectly entitled to do, takes one question and one
11 answer and reads it as if that is the whole story.
12 I am just noting for the record when we come to argue
13 the case that the matter is dealt with at considerable
14 length in the transcript.

14

MR. HUNT: I certainly don't dispute
15 it is dealt with at considerable length, but I have
16 put to the Doctor everything that relates to his
17 surprise at the arrest.

18

MR. SCOTT: I am not objecting to the
19 question.

19

THE WITNESS: I was rather - I wasn't
20 surprised, I was rather surprised.

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MR. HUNT: Q. Oh, that is something
22 different than being surprised.

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A. Yes, it is.

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THE COMMISSIONER: It is a degree of surprise?

THE WITNESS: It is a degree of surprise.

MR. HUNT: Q. What would be the degree of surprise that rather surprised is on the scale of surprised?

A. Well if the child - that I was - it was quite reasonable that this child might die and it just happened to have, to occur at that particular time and I was a little surprised at that when it occurred, but I wasn't surprised that the child died.

Q. Well, if there was some concern on the part of Dr. Rowe going into that meeting about the death of Allana Miller that you perhaps can't recall at this point in time, would it be fair to say that it may well have something to do with the surprise that you appear at one time to have expressed about her arrest at that point in time?

A. No. I think both of us were very upset with a lot of events that were occurring in the ward during that month. I think it is probably not related specifically to this particular question that you are talking about. That we are concerned about many of the things that are going on in the ward.



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The deaths that had been occurring in that month.

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Q. As you have indicated there was at least from the 18th of March an investigation going on that involved yourself and other doctors at the hospital, that was of a kind that you can't recall ever having occurred before?

A. Well, I don't understand that question.

Q. Well you indicated to us yesterday that as of the 18th when the readings, the levels of Kevin Pacsai became known there was an investigation undertaken to look into the drug itself, it involved checking the dosages, the stocks, going to the manufacturer to see if there were problems with the batch. I think you indicated that that type of an investigation or search for an answer was one that very rarely occurred, that you couldn't recall anything like that in recent memory having taken place in the Department of Cardiology.

A. Yes.

Q. So this all precedes the events of Saturday morning?

A. Yes.

Q. Now yesterday you indicated to Mr. Lamek that at the meeting with the coroners in the



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afternoon you had no memory of anyone from the hospital indicating to those present at the meeting that there was any question that the sample from Baby Estrella may have been contaminated?

A. Yes. I don't remember that fact at all.

Q. I think you indicated that it was quite conceivable that someone did make that comment?

A. Yes.

Q. Now, sir, if those present at the meeting, and particularly the Officers, Sergeants Press and Warr, who were taking notes, indicate that that was never mentioned by anyone at the meeting, are you prepared to disagree with that?

A. No, because I can't remember details of that and if they have written that down then I presume that is correct.

Q. Now, would you agree with me that at this meeting that was called by the Coroner to consider the case of Pacsai and Estrella, that if there was real concern on the part of anybody from the hospital that the Estrella samples were contaminated it would be astonishing if that was not immediately brought to the attention of the Coroner



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B 7 2 and the Police?

3 A. Yes. You would have expected
4 that would have been brought up at that time if that
5 was known. Now as you know I was not aware of all
6 the details of the fact that there were two samples
7 and one was drawn some hours afterwards and so on.
8 At that time I was not aware of that at all until
9 just recently when the evidence of Dr. Taylor was
discussed.

10 Q. You see Doctor, every doctor
11 who has testified here when the Estrella sample has
12 been mentioned has indicated real concern because the
13 sample may have been contaminated.

14 A. Yes.

15 Q. And I am suggesting to you that
16 if there was real concern on the part of anybody at
17 the hospital, as of March 21st, that weekend March
18 21st-22nd about the contaminated sample, it is
19 inconceivable that that would not have been drawn
20 quickly to the attention of the coroners and the
police?

21 A. Yes sir, it must have been
22 because it is on the post mortem reports that it says
23 "contaminated sample".

24 Q. You have indicated you are not
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prepared to disagree with the recollection of anyone who said it wasn't mentioned at that meeting?

A. No, but if the fact is there in the post mortem report.

Q. The reason why that would be important to draw quickly to the attention of the Coroner and the Police is because that is one of the very cases that they had called the meeting, or that the meeting was called for to discuss?

A. Yes.

Q. And it certainly wouldn't be a very good situation if people were left with the wrong impression as to the reliability of the sample. Do you agree with me?

A. Yes.

Q. If that fact was known at that point in time and was of real concern, that would be one of the major topics for discussion at such a meeting.

MR. SCOTT: That is argumentative Mr. Commissioner, it may be that is a matter to be argued, but the fact is it was in the post mortem report the Doctor said.

THE COMMISSIONER: Yes, but I understand the question.



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MR. SCOTT: Yes.

THE COMMISSIONER: It is a legitimate question, but as Mr. Scott says it is also legitimate argument.

MR. HUNT: I don't want to argue with the witness.

Q. Certainly you would have expected that would have been one of the topics that would have been dealt with at the meeting?

A. I would have suspected that. However, the pathologist was not at that meeting to my recollection.

Q. No, that is quite so, sir. But you have indicated to us that when you first heard of the Estrella sample it was unthinkable to you.

A. Yes.

Q. And so unthinkable that you put it out of your mind right away.

A. Correct.

Q. So it wasn't just the pathologists who would have been concerned about that but yourself who had heard about the sample prior to the meeting, you have indicated you were incredulous.

A. Yes.

Q. Well the suggestion I am putting



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to you sir is if in fact contamination was of such a concern that it caused you to dismiss this sample immediately upon hearing of it because it was so high, that certainly at a meeting several days later to discuss it you would have put those two things together and brought that to the attention of those present, would you not?

A. Actually my recollection of that meeting was that this was a meeting to arrange an investigation of these two cases. I think it was more of an organization thing and that this was the reason that everybody was brought together to get a consensus that this should be done, an investigation. This may be the reason that this particular detail was not dealt with in detail.

Q. Well in fairness, isn't it more than a detail, isn't it something that goes right to the heart of whether or not there is any need for an investigation? If the sample, the main piece of evidence that is under consideration is not reliable for some reason, isn't that something that is very very germane to the question of whether there should be an investigation?

A. I think in actual fact we had a better sample in Pacsai, and this, as I have mentioned



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2 all along, that this is the case that I felt needed
3 urgent investigation. I think that the whole matter
4 of Estrella is still unclear even after all these
5 months of investigation. I think that Pacsai is the
6 key bit of information that had to be discussed and
7 used, and Estrella was brought in as a second case
8 in order to suggest that perhaps there is more than
one case being involved.

9 Q. Certainly, sir, if proper
10 expert pharmacologists who testify indicate that a
11 sample contaminated in the way this one, it is
12 suggested this one was, could as well, given a higher
13 reading of digoxin, have the effect of diluting it
14 and giving a lower reading of digoxin you wouldn't
disagree with that?

15 A. No, this is a pharmacology
16 matter and this has all been dealt with in great
17 detail and Dr. Rowe has explained to you why it
18 could be high and this is beyond my competence to
19 discuss.

20 Q. Now out of that meeting I think
21 you have indicated that you were informed later that
22 evening with respect to the levels found, of digoxin,
found in Baby Miller?

23 A. Yes.
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Q. And is it fair to say that whatever concern you had with respect to the role digoxin may be playing in certain deaths escalated as of that night, Saturday night.

A. Yes.

Q. To the point where when you were informed of Baby Justin Cook's death on Sunday morning, I believe you have indicated you immediately went down to the hospital?

A. Yes, that is true.

Q. And that was at four or five o'clock in the morning?

A. Yes, Sunday morning.

Q. And at that point, sir, the reason - one of the reasons why you went to the hospital was because of the cumulative effect of the things that had been happening on the ward?

A. That is true.

Q. You wanted to be present to see for yourself what the situation was?

A. Right.

Q. And at that trip that you took down to the hospital that morning, one of the things that you did on that trip I take it was to observe some of the reactions of some of the people present?



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A. Yes.

Q. And that was something that you had very specifically in mind when you arrived at the hospital that morning?

A. I was anxious to see the child and get the details of the death, and also to see what the people were like who were caring for the child.

Q. Particularly some of the nurses?

A. Yes.

Q. And particularly Susan Nelles?

A. Not particularly, I wanted to see what they all looked like, that was the general term.

MR. HUNT: Thank you, those are all my questions.

THE COMMISSIONER: Yes, now Mr. Brown.

MR. BROWN: Mr. Commissioner, Mr. Sopinka is not here, his trial went on a little longer than he anticipated. In light of that I don't have any questions for the witness at this time, but there is a submission I would like to make to you Mr. Commissioner that arises out of the cross-examination of Dr. Freedom last week, by Mr. Percival.

At that time Mr. Percival questioned Dr. Freedom about several conversations he had with the



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Police in late March, and also referred to meeting with the Crown Attorneys in December, 1981.

I think Mr. Scott raised some objections as to whether that was proper subject matter for Phase 1 of the Inquiry.

THE COMMISSIONER: Yes.

MR. BROWN: And on the particular question of the contamination of the samples if I recall you ruled that it was a proper question and allowed it to proceed.

However, Mr. Commissioner, we have some difficulty inasmuch that if the Inquiry is to proceed in a Phase 1 and Phase 2 fashion we would, without knowledge of the information that the Police have and the Crown Attorneys have, find it very difficult to anticipate whether they intend to question the witnesses with respect to conversations that may have occurred during the course of the investigation, yet which they nonetheless feel are relevant to Phase 1 of the Inquiry.

For that reason I would request, Mr. Commissioner, that although I don't have any questions of this witness right now, you grant me leave to ask questions of this witness after Mr. Percival's cross-examination has concluded, and also that in future I



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2 would request that the order of cross-examination be
3 changed.

4 THE COMMISSIONER: The order in this
5 case I think is appropriate, the order may well change
6 at some later date. These witnesses are not unfriendly
7 to your cause, they are unfriendly to the Police cause,
8 and therefore I would think it is sensible that you
9 should come ahead of the Police so that the Police
10 will then have the opportunity to deal with the
11 questions that you have asked as well. That doesn't
12 mean that in a particular case for a particular
13 question you can't ask for the right for further
14 cross-examination, but just for a particular case.

15 Now when the time comes when the
16 witnesses are unfriendly to you, and that may never
17 come of course, but if it does come I am quite happy
18 to consider reversing the order and putting you at
19 the end of the cross-examination, but not for these
20 witnesses. These witnesses are on your side.

21 MR. BROWN: Well I have no doubt about
22 that Mr. Commissioner. However, as long as you are
23 prepared to allow me to make submissions to you --

24 THE COMMISSIONER: Certainly, the
25 funny thing about me is I will always allow any
submissions to be made, I don't always agree to grant



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them but I will certainly allow them to be made.

MR. BROWN: I simply wanted to raise that concern at this point in time and as I say I have no questions of this witness.

THE COMMISSIONER: Yes, all right, Mr. Strathy.

MR. SCOTT: When you used unfriendly of course that was in the technical sense.

THE COMMISSIONER: The technical, I certainly meant that.

MR. SCOTT: I hasten to add that because of the public.

THE COMMISSIONER: Yes, I must not forget, friendly means they are not giving evidence that is contrary to the interest of those --

MR. SCOTT: The accord between Mr. Percival and I throughout is based on natural history not the relationship of our clients.

MR. PERCIVAL: I thought it was just because he was Liberal.

CROSS-EXAMINATION BY MR. STRATHY:

Q. Doctor, looking at your curriculum vitae it seems to me that your career as a doctor goes back some 30 years, and that you have been treating children with heart disease for approximately that



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same period of time, is that right?

A. Yes.

Q. And I gather that in the course of treating children for heart disease you had occasion to use digoxin long before there were methods of testing the presence of digoxin, is that so?

A. That is true.

Q. And in the course of treating children for heart disease using digoxin, you presumably encountered the problem of digoxin toxicity?

A. Yes.

Q. And again that was a problem you encountered long before there were chemical tests for testing that?

A. Yes.

Q. And as I understand it the only means that you had in let us say the fifties and sixties for determining whether there was digoxin toxicity was the symptoms themselves, is that right?

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A. I think that, plus the electro-
cardiogram, which is an important -- and we have had
the electrocardiogram of course for many years.

Q. All right. So, the electro-
cardiogram was one of the things that assisted you?

A. Yes.

Q. In determining whether digoxin
toxicity was present?

A. Yes.

Q. But also of course the symptoms
themselves were something that you looked to?

A. Yes.

Q. Can you tell us please what were
the symptoms that you looked to, let us say before
there were radioimmunoassay tests for digoxin?

A. Oh, I think that probably an
irregular heart rate probably would be one of the
most important ones and then this would be elucidated
by looking at the electrocardiogram and as far as the
symptoms in the child probably vomiting is one of the
most frequent ones. There are many rare symptoms
that we rarely see in childhood that are discussed
in textbooks but I think that irregular heart rate
and vomiting are the chief ones that we have in mind
at all times when a patient is on digoxin.



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Q. All right. Dealing with those two things then, irregular heart rate and vomiting, I take it you would agree with the observation that those symptoms are not exclusive to digoxin toxicity?

A. No, that is very true.

Q. They may well reflect other conditions or indeed the very disease that the child has?

A. Yes. And I think that this little chart here would give you the differential of all the different things that can occur in sick children outside digoxin toxicity that can cause serious problems.

THE COMMISSIONER: Which chart?

MR. STRATHY: This is the chart entitled "Number of Each Variable Present in 36 Ward Related Deaths".

THE WITNESS: That must be an exhibit I am sure, Mr. Commissioner.

THE COMMISSIONER: It is an exhibit but I am just wondering what number so it will make sense in the transcript. Can anyone help us?

MR. SCOTT: It is either Exhibit 159 or 160, I think. Just a minute.

THE COMMISSIONER: I think we might



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put numbers on those three charts so that we will

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know what they are.

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MR. SCOTT: Exhibit 160.

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THE COMMISSIONER: 160.

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MR. STRATHY: May I just mark them.

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THE COMMISSIONER: Would you put 160

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on it and I wonder if we can, now that we have got

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Mr. Scott working, can you tell us what the other two
are?

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MR. STRATHY: Maybe we can do that

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during the break.

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MR. SCOTT: I just repeat what I am
told, I will see if I can get an answer here.

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THE COMMISSIONER: All right. Okay,
well, it is 160, do you agree?

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MR. SCOTT: Yes.

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THE COMMISSIONER: Yes, all right.

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MR. STRATHY: Q. Just looking at

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Exhibit 160 then, Doctor, are you telling us that

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all the variables, of which there are some 14 I believe

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set out on the bottom of the chart, all those

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conditions may produce symptoms which are similar to
those of digoxin toxicity?

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A. Yes.

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Q. So, obviously as a clinician

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diagnosing digoxin toxicity it may be a difficult and
confusing thing?

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A. Yes, particularly in the times
when we didn't have serum levels.

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Q. From that statement I take it
that having serum levels it is now considerably
easier to say whether the child is or is not toxic?

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A. I used to think that was true
until some of the pharmacology that was started with
this episode in the Hospital, and I am beginning to
feel less sure about the diagnosis of digoxin toxicity,
but this again is a biochemical pharmacological
subject that I have no expertise in.

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Q. Well, is the thing that makes
you less sure the discussion of the possibility of
some endogenous digoxinlike substance?

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A. Yes, this is true.

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Q. And I take it then that that
gives you some concern as to the very reliability of
the levels themselves?

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A. Yes.

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Q. Are there any other things that
give you concern about the reliability of the levels?

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A. No, I think that is probably
the most important. I can't think of other things now,

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but I think that there is work being done now to actually characterize the digoxin molecule so that to purify the test and eventually I suppose this will, regardless of anything else that is going on, that this will give us a very accurate idea of what the true digoxin level is. I am told by my friends that this is coming very soon.

Q. Do you know where that work is going on?

A. No, I can't. I'm sure Dr. Speilberg and others would be able to.

Q. Dr. Speilberg as I understand it is a pharmacologist at The Hospital for Sick Children?

A. Yes, that's right.

Q. And he is the source of your information, is that correct?

A. Yes.

Q. I gather we will be hearing from him in due course?

A. Yes.

Q. From what you have said however I take it you would agree with Dr. Rowe that for whatever they may be worth the digoxin levels are not the be-all and the end-all in the treatment of a patient?

A. I agree a hundred per cent.



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Q. You would be concerned about the actual symptoms displayed by the child itself?

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A. Yes.

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Q. I would like to read you just a brief extract from the report of Dr. Hastreiter.

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A. Yes.

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Q. I don't think it has been filed as an exhibit, I gather it will be in due course. Have you read Dr. Hastreiter's report?

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A. I'm afraid I have skimmed it

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but I haven't read it in detail, I'm sorry.

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Q. All right. Well, the portion

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that I'm going to read to you is at page 27 of

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Dr. Hastreiter's report.

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THE COMMISSIONER: Is that not an exhibit?

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MR. STRATHY: I don't think that is

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an exhibit.

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THE COMMISSIONER: No, but it was an

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exhibit at the preliminary inquiry, was it not?

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MR. STRATHY: No; at least this part of his report I don't think was.

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THE COMMISSIONER: What has happened, is this one of the many documents that Mr. Lamek has been distributing on the side?

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MR. STRATHY: He has given it to us
but not to you perhaps.

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THE COMMISSIONER: Yes. Well, I'm
sure he would have given it to me if I had asked for it.
Has everybody got a copy of this document?

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MR. SCOTT: That's not our experience,
that he gives you documents just when you ask for them.

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MR. LAMEK: Yes, Mr. Commissioner,
this document was distributed to all counsel to assist
them in preparing for cross-examination of the various
medical witnesses.

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THE COMMISSIONER: Yes, all right.

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MR. LAMEK: If you think it is
appropriate that it be marked as an exhibit at this
time I would be glad to do it.

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THE COMMISSIONER: Well, I think
obviously if we are going to refer to it I think it
should be an exhibit.

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MR. LAMEK: I agree with that.

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THE COMMISSIONER: Have you got any
extra copies available?

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MR. LAMEK: I don't even have my own
copy with me at the moment, sir. Maybe at the break
I can get it and mark it.

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MR. STRATHY: I have the extract here.



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THE COMMISSIONER: How long are you
going to be on this, just a brief period?

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MR. STRATHY: About five lines.

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THE COMMISSIONER: And is it the sort
of thing you intend to return to from time to time
because in that case we will make it an exhibit?

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MR. STRATHY: No, I think this is the
only extract I propose to refer to, Mr. Commissioner.

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MR. TOBIAS: Being moved by a spirit
of generosity this morning I will make my copy
available to Mr. Lamek.

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MR. LAMEK: Oh, I don't need it, give
it to the Commissioner.

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THE COMMISSIONER: I think it probably
better, strangely enough, that I have it at this time.
All right, thank you.

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MR. STRATHY: Q. Doctor, it is at page
27 under paragraph 1. I am going to show it to you
and read it. Perhaps you could read it out loud?

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A. Could you read it?

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Q. All right, sure. It says:

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"In my opinion the only true proof
of digoxin toxicity is the demon-
stration of high concentration of the
drug in blood or tissue. Digoxin



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"intoxication can mimic many other conditions and particularly in infants who are seriously and acutely ill from other causes, the differential diagnosis can be extremely difficult." Is that a statement which you would be prepared to adopt as your own?

A. I think that I would agree generally with that statement. As you know, there has been a great deal of discussion in this hearing pointing out that the digoxin level is not the way we treat the patient. Here we are talking about an intoxication and I would have to agree with that in terms of high levels of digoxin, way beyond the usual range. But I think we have to be very careful that we don't take the levels in treating patients as the only way to manage the patient. I think Dr. Rowe has made this quite clear in his testimony.

Q. Well, let me deal with it in two parts. Dealing with the second part first.

A. Yes.

Q. Where Dr. Hastreiter says:

"Digoxin intoxication can mimic many other conditions and particularly in infants who are seriously and acutely



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"ill from other causes, the
differential diagnosis can be
extremely difficult."

I take it you would agree with that?

A. Yes, yes.

Q. And in dealing with the first
sentence where Dr. Hastreiter says:

"In my opinion the only true proof
of digoxin toxicity is the demon-
stration of high concentration of the
drug in blood or tissue."

Do you have some reservation about
this statement that it is the only true proof of
digoxin toxicity?

A. I question that a little bit but
I think in general terms that's probably correct as
well.

Q. All right. And do you question
that because of the concerns you have already expressed
about the reliability of digoxin testing?

A. Yes, very true, that's why.

Q. All right, thank you.

THE COMMISSIONER: Is that the end of
that document?

MR. STRATHY: That's the end of
Dr. Hastreiter's report.



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THE COMMISSIONER: Perhaps you can
give this back to Mr. Tobias.

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MR. STRATHY: Q Well now, in the
course of his questioning of you and of Dr. Rowe, Mr.
Lamek has used the expression "consistent with digoxin
toxicity". Do you recall that?

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A. Yes.

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Q Would you agree with me that as
a doctor trying to treat a patient to know that the
symptoms are consistent with digoxin toxicity does
not tell you a great deal?

A. No, it is one of the items of
a differential diagnosis and when we see a patient
with any problem we immediately do an investigation to
find out what the basis of his problem is and we
come to a stage when we say that it is likely this,
it might be that, it might be something else and so on.
One of the things that we think about in looking at
children is the possibility of digoxin toxicity, if
that is a reasonable thing in the differential
diagnosis, and then we proceed to make a definite
diagnosis a working diagnosis and many times, even
though it is consistent, that that isn't the most
likely cause for the complaint and we treat the
patient in some other way because that's less likely
to be the explanation.



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Q. Well, dealing specifically with the work of this Commission and attempting to come to some conclusion as to how various children met their deaths, would you agree with me that in the absence of an RIA digoxin level it is not a great deal of help to know that the child had symptoms which were consistent with digoxin intoxication?

A. I would agree with that statement.

Q. All that tells you as a doctor, sir, is that you cannot rule out digoxin intoxication?

A. Yes.

Q. But if you as a doctor are trying to determine the cause of a particular child's death what you do is look for evidence which points to specific conclusions?

A. Yes.

Q. And the fact that the child shows signs which are consistent with digoxin intoxication is really evidence of many, many things?

A. Yes.

Q. Now, dealing with that point, with the point of evidence pointing to the cause of death, you dealt in your evidence through Mr. Lamek with some 19 babies?

A. Yes.



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Q. According to my count?

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A. Yes.

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Q. With which you had an involvement?

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A. Yes.

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Q. And as I understand it the only

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babies in which you saw evidence which pointed to

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digoxin intoxication as a cause or contributing

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factor to death were four cases, namely, Estrella,

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Pacsai, Miller and Cook. Do I have that correctly?

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A. Well, I have mentioned several

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times in my evidence that I want to put Estrella in

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a little different category, that this is still a

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questionable case and that would mean that my cases

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would be that the other three ---

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THE COMMISSIONER: Doctor, you're

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not quite answering the question. The question was:

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the only ones in which you saw evidence. You are

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answering it as though those are the only ones in

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which you thought ---

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MR. STRATHY: I am going to come to

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Estrella in a moment, Doctor. But as the Commissioner

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has pointed out to you, am I correct that those four

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at least, Estrella, Pacsai, Miller and Cook are the

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only four in which you saw some evidence?

A. Yes, all right, I would agree

with that, yes.



C.14

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Q. You obviously have concerns about the reliability?

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A. Yes, yes, all right.

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Q. But those are the only four in which you see as a doctor evidence pointing to digoxin toxicity as a contributing factor to death?

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A. Yes, yes.

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Q. And may I take it from that that with respect to the remaining 15 you are satisfied as to the clinical and anatomical reasons for the child's death?

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A. Yes. I went over Dr. Rowe's testimony and I agree that there are medical reasons for those people dying outside of digoxin toxicity.

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Q. But dealing with those remaining 15, I take it if you had any concern about digoxin toxicity contributing to the death of those 15, any one of those 15, you would have told us?

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A. Yes.

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Q. All right. Then dealing with Estrella. Mr. Lamek, in his examination of you, raised at least a concern, or what I took to be a concern on his part that you did not raise some hue and cry when you heard about the Estrella levels. As I understood your evidence, at least yesterday and



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today, is that the reason you didn't raise a hue and cry is that you felt there must be some error or inaccuracy in those levels, is that right?

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A. Yes.

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Q. I wonder if you can tell us please what at that time, and let's deal first of all with at that time when you first became aware of that level, what type of error or errors did you envisage as leading to that level?

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A. Well, I think other people have mentioned the same thing, the simple mechanical - transposing a decimal point is one thing.

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Q. In other words that the person doing the test instead of 7.2 put 72?

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A. Yes, or many other mechanical mistakes in the biochemistry. I must say that I assumed that the error probably was in the actual laboratory doing the test rather than some other error, but that was my feeling about it, that that was the explanation for that unusual test.

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Q. That was your view at the time at least?

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A. Yes.

Q. And would you have thought at the time that if the lab had come across a reading of



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72 in a particular child which they truly believed was an accurate reading, would you have thought that perhaps someone from the lab would be up raising a hue and cry?

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A. Yes. I presume that they would be obliged to make their report to the pathologist because that's where the specimen came from. So, it would then have to come to me from the pathologist. So, between the laboratory and the Pathology Department, I would have thought that if in their judgment this was a true bill, that this would have sparked a very active investigation immediately it was detected.

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Q. Now, I asked you about your knowledge at the time and you have mentioned of course both yesterday and today that you have further reservations about the Estrella sample?

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A. Yes.

Q. What do you know today, Doctor, in addition to your hypotheses at the time that gives you concern about the Estrella sample?

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A. Well, in the first place, I didn't realize that there were two samples; one of the samples -- I am sorry that I haven't got the specific evidence, the statement of Dr. Taylor, but I think that was discussed previously a few weeks ago,



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but I understand that one of the samples was taken from the gutter, this is in the abdominal cavity, in which all sorts of body juices have collected and they got one sample from there and then the other one, as I understand it, was taken from the femoral vein and that they had to milk the leg some hours after death when the child was actually in the morgue.

Now, you probably have the actual description of this but at any rate that also might cause quite a high increase in the level. I think someone, I guess Mr. Hunt suggested that any contamination might make the level lower, but in actual fact the levels of digoxin in the heart for instance are 300 times what they are in the serum and if you do something to the heart, even cardiac massage or stick a needle in it, then the levels in the blood, in the heart will go a way up.



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So I think because - these are things beyond my expertise, and this is all hearsay and you should ask the experts.

Q. All right. Fair enough. I will come to those obviously in due course, but dealing simply with Estrella you have mentioned two things: the gutter blood and the milking of the leg to obtain samples.

Now is that where your concern lies as to the source of the samples?

A. Yes. Now I still have my other concerns about the laboratory itself, and that is another concern to add to these.

Q. These are the concerns you expressed earlier?

A. Yes.

Q. So your more recent concerns, sir, are concerns that result from your knowledge as to what the samples were?

A. Yes.

Q. And your concern that they may not reflect true levels at the time of death?

A. Yes.

Q. I understood your evidence to be really that unless we have kept samples of this



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child's blood or unless there are samples still present today that we could test, we may never know whether the samples taken shortly after death were reliable samples?

A. Yes. I think that is a true statement.

THE COMMISSIONER: I am sorry. You said it and the witness accepted it. I have some trouble with it. What difference would it make if we kept - I don't know whether we have but what difference would it make if we kept it if in fact the samples are not proper samples? What difference would it make whether we kept them or not?

MR. STRATHY: Perhaps we can ask the Doctor.

Q. Suppose we did have samples still with us today, Doctor, what difference could it make?

A. I think you are perfectly correct that even though we are able to identify the molecule itself and its concentration, if we don't know that it is in the bloodstream, then I think it is still questionable, so I guess we should say it is unlikely that we would ever know for sure whether that was a true intoxication or not.



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Q. So even if we had a sample today

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we could never be sure of its reliability?

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A. Yes.

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MR. STRATHY: All right. Thank you,
Mr. Commissioner.

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THE COMMISSIONER: It would make me
feel better but ...

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MR. STRATHY: I think as a practical
matter, I don't think we do have samples.

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THE COMMISSIONER: Well, I don't know,
I have never heard because we never did have when the
witnesses were in the box, we never dealt with that
problem, so we will have that later and find out
whether the samples are here or not and find out if
there is anything can be done with respect to them.

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MR. STRATHY: Q. Doctor, just before
I leave Janice Estrella, would you agree with me that
Janice Estrella was a very, very sick baby, and in the
circumstances of her death you are not surprised that
she died when she did or in the manner that she did?

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A. Yes, I agree with that.

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Q. Turning then to Kevin Pacsai,
I take it again that what troubles you, the evidence
that troubles you with respect to Pacsai, are these
digoxin levels. Is that right?



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A. Well, yes, but I am not nearly as concerned about Pacsai as I was with Estrella because these are better samples. In other words, they are more reliable, and if you have a sample of whatever it was, 20 or 25, that was taken during life from the bloodstream, then that is a different situation.

Q. All right. Well, I would like to take you up on that, Doctor, because my recollection of the evidence is that there were two samples taken.

A. Yes.

Q. One was a sample of greater than 10.

A. Yes.

Q. In other words it couldn't be diluted further.

A. Yes.

Q. One dilution showed it to be greater than 10.

A. Yes.

Q. That was taken at 5:30 a.m. and according to my recollection it was taken in the course of the resuscitation efforts.

A. Yes.



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Q. Now there was also a second sample, and that was the one that was 24 or 25.

A. Yes.

Q. That was taken after death?

A. Yes.

Q. So the sample that was taken during life, as you said, was the sample greater than 10?

A. Yes.

Q. And it was really taken after the arrest. In other words, while the resuscitation was going on?

A. Yes.

Q. Does that refresh your memory?

A. Yes. I wasn't - that is true, and of course will be questionable as well.

Q. All right. Well, that is what I want to ask you, about that.

A. Yes.

Q. In that level taken in the course of the resuscitation efforts --

A. Yes.

Q. -- I suggest to you: there may be some doubt as to the reliability of that level?

A. Yes, I agree, and certainly the



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second one when he was just prior to death in the intensive care, of course, would also have the same questions about its reliability because the heart has been forced by cardiac massage and so on, and that this may be artificially elevated as well.

Q. Well, that is what I want to ask you about. What are the things that might occur during a resuscitation effort that might affect these levels and might cause questions as to the reliability?

First of all I take it you would agree that this cardiopulmonary massage where the heart is actually manipulated --

A. Yes.

Q. -- may cause an increase in the digoxin level?

A. Yes. I would agree with that.

I don't know whether there are papers to prove that, but it would seem very logical that you would be bruising the heart every time you squash it. You have to push it hard in order to make blood come out to the brain, and so you have to bruise the heart each time you do it. And I think that quite likely would increase the digoxin level.

Q. And how would it do that, Doctor?

1
2 How would it increase the level? Would it tear the
3 heart or would it squeeze the digoxin out of the
4 heart?

5 A. Well, I suppose there might be
6 many cases I think you might have a tear. It is
7 unlikely you would actually make a real tear in the
8 heart but you might have a microscopic tear in the
9 lining of the heart, for instance, and some of the
10 free digoxin would get into the heart. And as I say,
11 the concentration in the heart muscle is I think
12 something like three times, three hundred times what
13 it is in the blood. So it doesn't take too much
14 coming from that abnormal source to put the level up.

15 Q. So?

16 A. And just the other point, of
17 course, is there any time you are resuscitating a
18 child, and I don't know whether this was done in
19 this particular child, but if you stick a needle
20 into the heart with a stimulant, that of course makes
21 a hole in the heart and that will leak digoxin, and
22 of course we know that if we are talking about Pacsai,
23 that this child has been digitalized so there is dig.
24 on board in the tissues of the body.

25 Q. All right. Let me deal with
that, with the two things you mentioned. First of all,



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the massage.

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May we take it simply the process you
see is somehow the heavily laden heart muscle --

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A. Yes.

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Q. -- having digoxin in effect
forced out of it and into the blood stream.

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A. Yes. This is my understanding
that that could have happened. Now I don't know if
there is evidence to show that but I suspect there may
be.

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Q. All right. And secondly then
this process of intracardiac injection of drugs may
also create some, in a different way, create a hole
in the heart thereby causing digoxin to leak out of
the heart and into the bloodstream?

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A. Right.

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Q. One last possibility, Doctor,
as to something that takes place at cardiac arrest,
we have heard about this electrical stimulation of
the heart.

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A. Yes.

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Q. Defibrillation?

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A. Yes.

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Q. Is it your understanding that
that may cause an effect on digoxin in the bloodstream?

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A. Yes, I am sure that that does,
and I am almost sure that there must scientific papers
to prove that.

Q. Do you know how that process
takes place?

A. I am not quite sure what would
happen there, but I think that here again it is sort
of an electrical - quite a high amount of electric
current through the heart muscle, and I would imagine
that that would cause digoxin or could cause digoxin
to leak into the bloodstream.

Q. Is there anything else, Doctor,
that would occur at the time of resuscitation efforts
that in your view might change the digoxin levels in
a child's blood? Other than the three things you have
mentioned so far.

A. Well, of course if you have a
cardiac arrest, circulation to all of the organs stops,
including the kidneys.

The kidneys are the major organ to
eliminate digoxin under ordinary circumstances. If
the kidneys stop working, or because of the absence
of a proper blood supply for even a few minutes, that
again might cause digoxin that was not abnormal to
begin with, would build up in the bloodstream because



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it wasn't being normally eliminated by the kidneys.

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Q. Thank you. Is there anything
else that might occur?

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A. I can't think unless - I
suppose some of the drugs that are being injected
may have some effect on the heart muscle, and this
is conjecture and I can't give you definite examples.

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Q. All right. Thank you.

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Now, Dr. Rowe's evidence with respect
to Kevin Pacsai, and I am not going to point to the
page because I don't have it, but to my recollection
it was that when he first heard of the levels in
Pacsai his reaction was that it must have been a
medication error.

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A. Yes.

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Q. When he heard these levels of
10 and 25.

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A. Yes.

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Q. Do you recall what your reaction
was when you first heard those levels?

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A. Well, as I mentioned in my
evidence yesterday this is the sort of thing that we
would immediately think of, and I can't specifically
remember, but I would immediately have thought that
it probably was the medication error, and that is why



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Dr. Carver and Dr. Rowe asked me to do that investigation on the ward.

I must add to that that I am not an investigator for this sort of thing, and I am a real amateur, and I just --

Q. You are not a policeman; you are a doctor?

A. That is right, and it was under the care of the coroners, and presumably the police if needed, and that this was a very superficial way of deciding whether there was an error or not, and I believe when I gave my evidence yesterday to Mr. - I can't remember, one of the other people who was cross-examining me, he said that, well, you did that investigation; therefore it must be something else. And I can't go along with that because I am not an expert.

Q. Well let me stop you there, Doctor. Dealing with the possibility of an accidental administration of digoxin or a medication error, which you say is something you considered at the time.

A. Yes.

Q. And obviously you were dispatched by the hospital to investigate that possibility. How



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do you as a doctor conceive that that sort of error
may happen in a particular case?

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A. Well, I think this sort of
thing - you know, there is lots of evidence to
indicate that there are medication errors that occur
in hospitals, and the errors - you don't want - do
you want me to list them?

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Q. Yes. I would like you to tell
us how a medication error can occur.

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A. That somebody gave the incorrect
dose to the individual because they didn't calculate it
correctly; they gave it to the wrong patient; that the
medication itself has been - there is something wrong
with it from the manufacturer, and I think those are
the main sort of - those are the things that I looked
into at any rate.

16

17

Q. All right. So that the patient
could get in effect an excessive dose of digoxin?

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A. Yes.
Q. Or that one patient's digoxin
could be given to another patient?

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A. Yes.
Q. Or that the digoxin itself could
be increased in strength unbeknownst to the hospital?
A. Yes.



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Q. What about the fourth

possibility, Doctor, that somebody gives digoxin to a patient thinking it is something else? In other words intends to administer drug X.

A. Yes, of course that is very true. That is another error, medication error.

Q. So the wrong drug rather than the wrong patient?

A. Yes. And of course the other minor thing is about the timing of the drug. In other words digoxin is given twice a day, roughly 12 hours apart, and the other sort of error that could occur is that somebody gives the dose and then someone else didn't realize that the dose had been given, so it is a double dose or someone forgets to do it or somebody - that sort of error, but these are all nursing sort of concerns that I am not really involved in that type of thing, and this is why I approached the head nurse at that time and we went over these possibilities.

Q. All right. Well, Doctor, all the types of errors you have mentioned, of course, are all human errors?

A. Yes.



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Q. And I take it they are all errors

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that you are familiar with in your experience in

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hospitals?

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A. Yes.

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Q. They happen?

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A. Yes.

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Q. From time to time?

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A. Yes.

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Q. And in fact the problem of giving

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digoxin instead of another drug in fact happened in

12

another part of the hospital to your knowledge; isn't
that right?

13

A. That is true.

14

Q. The digoxin got confused with
epinephrine or adrenaline as it is called?

15

A. Yes.

16

Q. Vice versa?

17

A. Yes.

18

Q. You are familiar with that?

19

A. Yes, I am familiar.

20

Q. On the seventh floor, some
babies, because the medications looked alike?

21

A. Yes.

22

Q. Some babies got digoxin instead
of adrenalin?

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A. Yes.

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Q. And in fact one baby died as a
result of that?

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A. I am not familiar - I don't
know the details, but I know.

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THE COMMISSIONER: I don't think that
is what happened.

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MR. STRATHY: Well, I think with all
respect that is so, Mr. Commissioner.

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THE COMMISSIONER: Well, I understand
that it happened but I thought it was something, some
mixture between a vitamin E and something else.

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MR. STRATHY: Oh, yes.

14

THE COMMISSIONER: I don't think it
was digoxin.

15

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MR. STRATHY: I am sorry. Yes, that
is quite so. Excuse me. I misstated that.

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THE COMMISSIONER: That is the
Jonathan Murphy case.

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MR. STRATHY: Yes.

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THE COMMISSIONER: The third Murphy.

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MR. STRATHY: Yes, the other Murphy.

22

Q. Excuse me, Doctor, it was
vitamin E and epinephrine.

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A. And epinephrine on the newborn

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ward.

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Q. You are familiar with that?

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A. Yes I noticed that. I know --

5

Q. And I am correct, though, that
was simply a matter of confusion?

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A. Yes.

7

Q. Of the two medications?

8

A. Yes.

9

Q. So that when you were considering
the types of medication errors it could have happened
with respect to Pacsai are the things that you have
mentioned to me the things that went through your
head as possibilities?

13

A. Yes.

14

Q. Now did you give, Doctor,
consideration to the possibility that digoxin may
have been inadvertently administered in the course
of the resuscitation effort?

18

A. I must say that at that time I
didn't - that possibility didn't occur to me, but in
retrospect, of course, that is another explanation
for that.

21

Q. All right. And what I am
referring to, Doctor, is the possibility that in the
tension and excitement of the resuscitation effort --

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A. Yes.

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Q. -- some one baby or perhaps more

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than one got digoxin instead of some other drug?

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A. Yes.

6

Q. Is that --

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A. Yes, I think that is possible.

8

Q. All right. Now can you tell us,

9

please, why in retrospect you consider that to be a possibility?

10

A. Well, just thinking about all

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the errors, this is a possibility, and I think that

12

there are examples in which such an accident has

13

occurred during - I don't know whether it is related

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to digoxin but I think that it can occur, using

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other drugs, and of course as you know now with our

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controls that we now have in our hospital on digoxin

17

we don't have digoxin on the crash cart.

18

If that is needed, and occasionally it

19

is, they have to go to the locked cupboard and get it as I understand.

20

Q. Let me ask you about that. In

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1980 and 1981 during the period that we are speaking

22

of, Doctor, was digoxin kept on the crash carts in

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4A and 4B?

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A. Yes, I believe it is, and I

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believe this was one of the first things that was done ordered by Dr. Carver to residents to go and collect all the digoxin on the crash carts.

Now I don't know whether they found digoxin on the crash carts on 4A at that time or not, but this was one of the sources that they thought should be controlled.

Q. Well let me ask you, looking back as you are now to that period, is it your understanding that during that period digoxin was kept on the crash carts in 4A?

A. That is my understanding.

Q. So you would have expected to find it there?

A. Yes.

Q. Now you have told us that you have read I believe - perhaps skimmed - Dr. Bain's report?

A. Yes.

Q. Have you in fact read it in full, do you recall?

A. Well, again I haven't read it word by word because I was familiar with most of the discussion, but I have looked at it.

MR. STRATHY: That is Exhibit 48,



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Mr. Commissioner, the Bain Report.

Q. Doctor, do you recall the pharmacological portion of that report where it comments on how the levels in these particular children might have been achieved?

A. I don't remember the details of that now.

Q. Let me perhaps put it to you.

Mr. Commissioner, it is the Bain Report, Exhibit 48, at page 39.

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THE COMMISSIONER: It starts at page 38, does it not?

MR. STRATHY: I beg your pardon?

THE COMMISSIONER: It starts at page 38.

MR. STRATHY: Page 39 is the portion I was going to read.

THE COMMISSIONER: Yes, all right, thank you.

MR. STRATHY: Q. If you will look at that page 39, do you have page 39?

A. Yes.

Q. Under the heading (d) (1)?

A. Yes.

Q. The report is referring to the blood levels in the children Pacsai, Miller and Cook, and I believe Inwood. It says:

"All blood levels obtained can be explained by administration of a single vial of digoxin (for most infants) a single vial of adult strength 0.5 milligrams shortly before death by intravenous bolus." Then sub (2):

"The data do not permit exact timing of administration. Doses could have



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"been given prior to or during the resuscitation efforts. The extremely high level achieved in one infant, Inwood, is strongly suggestive of administration very near the time of death."

Then it goes on in sub (3):

"Therefore several different hypotheses have to be considered in interpreting the blood levels in terms of amount, timing and intent. It would seem unlikely that administration of multiple vials by accident could occur.

"If however a single vial can account for the levels achieved then either accidental or intentional overdose is a possibility. Vials of digoxin resemble vials of many different emergency medicines and there is ample literature on confusion of ampules of different drugs in a variety of clinical circumstances. "

Just stopping there. Do you agree that vials of digoxin resemble vials of many different emergency medicines?



E.3

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A. Yes, I would agree with that.

3

Q. And do you agree that there is

4

certainly ample literature on confusion of ampules

5

of different drugs in a variety of clinical circum-

6

stances?

7

A. Yes.

8

Q. Indeed there are examples in

9

the literature of confusion, and I am sure in your

10

own experience?

A. Yes.

11

Q. Of confusion at the time of

12

resuscitation efforts?

13

A. Yes.

14

Q. And simply positing, Doctor, as

15

it posits here, that the blood levels can be explained

16

by the administration of a single vial of digoxin

17

shortly before death, and let us say very near the

18

time of death?

A. Yes.

19

Q. Would you agree with me that

20

one possibility that ought to be considered, and let

21

us take any particular death.

A. Yes.

22

Q. Is the possibility that during

23

the resuscitation efforts digoxin got confused with

24

something else?

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E.4

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A. I think that is quite possible.

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Q. Thank you, can we turn please

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to the next child, Allana Miller. Do you recall the
circumstances of Allana Miller, I take it?

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A. Yes.

6

Q. In terms of her condition, you
are familiar with those conditions?

7

8

A. Yes.

9

Q. And I think you would agree

10

with me in observing that she had a very serious and
severe heart disease?

11

A. Yes.

12

Q. I think you said that on post
mortem it was discovered to be even more serious than
was originally thought?

13

14

15

A. Yes, because she had the

16

complication of pulmonary vascular disease, so that

17

the heart disease had affected the lung circulation

18

so that she had very high pressure in her lung arteries

19

and probably was not a candidate for surgery. She

20

probably would have succumbed if she had surgery,

21

which we were planning to do fairly soon after her
death.

22

Q. So dealing again with this

23

word "evidence", on the evidence as you saw it when

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E.5

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the child died, you were satisfied that her condition explained her death?

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A. Yes, and this was the reason that I reported to the Coroner's at that time.

5

6

Q. Deaths in children in your Hospital on these wards is something you have become accustomed to obviously?

7

8

A. Right.

9

Q. It is a fact?

10

A. Yes.

11

Q. It is a fact of the work of the ward?

12

13

A. Yes.

14

Q. So that you were not obviously sufficiently concerned about this death to raise a hue and cry?

15

16

A. That is correct.

17

Q. But when you became aware of the evidence of these levels that is when you became concerned?

18

19

A. Yes.

20

Q. And that is when you did obviously notify the coroner?

21

22

A. Yes.

23

Q. But again, what troubled you in

24

25



E.6

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2

this particular case were Allana Miller's digoxin
levels, is that right?

3

4

A. Yes.

5

Q. The level found in her blood?

6

A. Yes.

7

Q. On RIA testing?

8

A. Yes.

9

10

Q. And the only level that we are
aware of as far as the evidence goes is the level
taken post mortem after resuscitation efforts?

11

A. Yes.

12

Q. Are you aware of that fact?

13

A. Well, there was one level during

14

life which was, I am sure that you went over that

15

before, I think it is .6 or some very low level and

16

that was a day or two before her death, and then the
postmortem level.

17

Q. Well obviously that .6 doesn't

18

give you any concern?

19

A. No, of course not.

20

Q. But the post mortem level

21

taking place as it did post mortem?

22

A. Yes.

23

Q. And after?

24

A. Yes.

25

Q. After resuscitation efforts



E.7

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with all the potential problems that you have described, I take it you would agree that we may have some reservations about the validity of that postmortem level?

A. Yes.

Q. You yourself would have some reservations?

A. Yes. What is that, I can't remember the level, what was it?

THE COMMISSIONER: 72.

MR. STRATHY: Q. 72 I think.

A. It was quite high though.

MR. LAMEK: 78 I think it was.

MR. STRATHY: 78. In any event, you would have concerns about the reliability of that level?

A. Yes.

MR. STRATHY: Mr. Commissioner, I will be a bit longer, I have some more children to do, would this be a convenient time?

THE COMMISSIONER: Yes, we will take 20 minutes.

--- Short recess

--- Upon resuming:

THE COMMISSIONER: Yes, Mr. Strathy?

MR. STRATHY: I think we should wait



E.8

1

2 for Miss Chown, who is counsel for the witness.

3

4 THE COMMISSIONER: Well now, I have
5 never taken that approach, perhaps you are more of a
6 gentleman than I am.

7

8 MR. STRATHY: I am just thinking of
9 the witness.

10

11 THE COMMISSIONER: Can you ask some
12 pretty non-controversial questions?

13

14 MR. STRATHY: How did you get in today
15 or something of that nature?

16

17 THE COMMISSIONER: It is hard to do it
18 to start without the witness themselves, but other
19 than that - anyway, the problem is now resolved.

20

21 MS. CHOWN: My apologies, Mr.
22 Commissioner.

23

24 MR. STRATHY: Q Doctor, if I could
25 ask you to turn your mind to the case of Justin Cook?

26

27 A. Yes.

28

29 Q. And would I be fair in saying
30 that what gives you particular concern in the case
31 of Justin Cook is that you have high levels, high
32 digoxin levels both, and I am going to put it in
33 quotes, "ante mortem" and "post mortem" in a child
34 who was not supposed to be receiving digoxin?

35

36 A. Yes, that is true.

37

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E.9

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Q. And would I be correct in thinking that in the case of Justin Cook any member of the staff of the Hospital, certainly the nursing staff and the medical staff, would know simply by looking at the child's chart that he was not to receive digoxin?

A. I would have expected that. The ordering system is very definite in the Hospital and all orders are written down appropriately and any person who had any knowledge of the child would know that digoxin was not to be given.

THE COMMISSIONER: Where would it be written down, Doctor, do they put it on the bed or something?

THE WITNESS: No, there is what is known as the order sheet and the doctor writes all the things that are to be done, and all the nurses and anybody who is caring for the child always looks at the order sheet.

THE COMMISSIONER: Is it kept with the child?

THE WITNESS: No, it is on the chart at the nursing station.

THE COMMISSIONER: Yes, all right, thank you.



E.10

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MR. STRATHY: Q. But certainly you would expect that the nurses who are responsible for administering the digoxin to the children would know, make it a point of knowing which children were and were not supposed to receive digoxin?

A. Yes, that is true.

Q. Would I also be correct in knowing that by the time of the evening of the 21st of March, that is just before Justin Cook died, that anybody who had anything to do with Wards 4A and 4B would know that there was a great to-do going on in the wards about digoxin?

A. Yes. I think we have to be fair to say that I don't think at that stage an official meeting had been called of all the ward staff to say that this is the explanation, because everything was happening so quickly, but as everyone realizes that there would be pretty common knowledge in the ward that there was a lot of concern about digoxin.

Q. Well, it would have been common knowledge on the ward by that point that a coroner's investigation had been ordered into Pacsai's death, would it not?

A. Yes, I would have expected that, yes.



L.11

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Q And also that the reason for that was the high levels of digoxin that had been discovered in the child?

A Yes.

Q And it would have also been common knowledge that Allana Miller had had high digoxin levels in her system?

A I am not sure that perhaps everyone would know that, because that was not reported until the evening and it may well be that the ward staff were not aware of that particular level but they may know about it as well, I have no idea.

Q In any event by that evening there was a good deal physically going on in the ward in reference to digoxin?

A Yes.

Q People were going around trying to find out where it was?

A Yes.

Q Taking it off the crash carts?

A Yes.

Q Or looking for it?

A Yes.

Q And it was being locked up like you would a narcotic?



E.12

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2

A. Yes.

3

4

5

Q. So that anybody on the ward at that time seeing these events would know that there was a concern about digoxin for whatever reason?

6

A. Yes, that is true.

7

Q. Now, dealing with those levels --

8

THE COMMISSIONER: The lock-up was at what time?

9

10

11

12

THE WITNESS: Well, I am not sure, Mr. Commissioner, I think it must have been prior to midnight but I am not sure exactly when the actual - when they actually went around.

13

14

THE COMMISSIONER: I know this is an exhibit but I don't know where it is, it has its time on it.

15

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THE WITNESS: I think that that didn't come out until the following day, but I think that the verbal instructions had been given by the nurses in charge, the night nurses, I think by midnight but ---

20

21

MR. SCOTT: Exhibit 165, the time is 2225 hours, that used to be 10:25.

22

23

24

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MR. STRATHY: Q. Well that memo, Doctor, being time 10:25, is it still your recollection that by midnight the digoxin was secured under lock and key?



E.13

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2 A. Yes, that is my recollection.

3 Q. And that would certainly be
4 perceived by the people on the floor as a pretty
5 unusual step?

6 A. Yes.

7 Q. Digoxin certainly is not a
8 narcotic in any way, is it?

9 A. No.

10 Q. Now, dealing with Justin Cook
11 just for a moment. I mentioned the levels to you and
12 I suggested that one of the levels at least should
13 be called "ante mortem".

14 A. Yes.

15 Q. Because it is my understanding
16 that there were three levels taken.

17 THE COMMISSIONER: I am still concerned
18 about this.

19 MR. STRATHY: I am sorry.

20 THE COMMISSIONER: I am sure we have
21 had this before, this is confidential but who is this
22 confidential to?

23 MR. STRATHY: Can I put that Memo 165 --

24 MR. PERCIVAL: Is that the one that
25 said "Draft-Confidential"?

THE COMMISSIONER: No. The one I have

24

25



E.14

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just says "Confidential, Saturday March 21st, 2225".

3

MR. PERCIVAL: That is another

4

document.

5

THE COMMISSIONER: There is another

6

one besides that. Well this one, I would just like
to know, Dr. Fowler, did you prepare this document?

7

THE WITNESS: No, I didn't, and I

8

don't know that I have seen it. I am not sure

9

where that came from, I suspect that originated from

10

Dr. Carver's office.

11

MR. SCOTT: I think the evidence

12

will be, Mr. Commissioner, if it isn't in directly,

13

that Dr. Carver prepared that and I think that

14

Dr. Costigan did the actual search ---

15

THE COMMISSIONER: Presumably we will

find out from him what happened to it.

16

MR. SCOTT: Yes, there are lots of

17

doctors just waiting to get in to give evidence.

18

THE COMMISSIONER: Yes, yes.

19

MR. STRATHY: Q. Just to be sure we

20

have got that evidence, Doctor, where it says:

21

"All digitalis will become a

22

controlled drug immediately and

23

treated as a narcotic. All digitalis

24

preparations in the Hospital will be

25

locked in the narcotics cabinet."



E.15

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2

It is your recollection that that was done,

3

accomplished by midnight that night?

4

A. Yes, this was my recollection.

5

Q. Now then, turning to Justin Cook,

6

I was suggesting to you that of the three levels,

7

and the levels I have are 100, 72 and 68 nanograms

8

per millilitre, of those levels, one of them, and I

9

am not sure I am afraid which one, was taken during
the resuscitation effort?

10

A. Yes.

11

Q. So while we may call it ante

12

mortem it was still not ante mortem in a sense of

13

prior to arrest?

14

A. Yes.

15

Q. Is that your understanding?

16

A. Well, I haven't got the chart

17

in front of me, but if you say that was taken during

18

the arrest then it has all the provisos that we
discussed a few minutes ago.

19

Q. All the provisos about its

20

reliability?

21

A. About its reliability.

22

Q. And with respect to the other

23

levels which were post mortem, would you also agree

24

that they have provisos as to their reliability as we
have discussed?

25



E.16

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A. Yes.

3

Q. Given the resuscitation efforts?

4

A. Yes.

5

Q. And also given what we know

6

about this escalator effect and multiplier effect
relating to postmortem digoxin levels?

7

A. Yes.

8

Q. Now, Doctor, can I ask you

9

briefly please to refer to one other child, namely

10

Michelle Manojlovich?

11

A. Yes.

12

Q. If I am correct that is Exhibit

13

111A, and would you turn to page 22 of the chart. I

14

simply wanted to be sure of one thing, Doctor, and

15

that is exactly what the child's disease was. If you

16

look at the bottom of page 22, the last paragraph,

17

there is a letter from Dr. Rose to the child's

18

"Regrettably, critical pulmonary

19

stenosis or pulmonary atresia with

20

intact septum is a bad disease ... "

21

What I am wondering about is do you know which it was,

22

was it "pulmonary stenosis" or was it "pulmonary

23

atresia"?

24

THE COMMISSIONER: Do you realize we

25

may well have Dr. Rose this afternoon?



E.17

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2

THE WITNESS: Is there a post mortem
result on this child?

4

MR. STRATHY: Q. Yes, I believe there
is.

5

6

A. Well, I can tell from that, do
you know what page that is on?

7

8

Q. I will do my best. If you look
just over the page, it may not be too much help but
it is the Cardio-Surgical Conference Report, page 23.

9

10

A. Page 23?

11

12

Q. Yes, it refers to anatomical
diagnosis, critical pulmonary stenosis, but if you
look at page 73 in the discharge report --

13

14

A. Yes.

15

16

Q. -- it says:

"The final diagnosis is pulmonary
atresia".

17

That is at the bottom of the page.

18

19

20

21

22

A. Yes. There is a slight
important difference. People who have critical
pulmonary stenosis have a slightly better prognosis
than people who have pulmonary atresia with an intact
ventricular septum. Are you sure that this child
had a post mortem performed?

23

24

25

Q. You are quite right, there was



E.18

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2

no post mortem because this was the child that

3

aspirated and there was no post mortem.

4

A. Yes.

5

Q. So the final diagnosis, there

6

may be some doubt as to which it was, is that fair to say?

7

A. I am not - I am sorry, there

8

are other ways of getting at this but it is difficult

9

for me. Oh, here we are, yes - no, this is the

10

operating report on page 225 and this was ---

11

Q. Just hang on a second, you are

12

referring to - oh yes, this is after the operation?

13

A. No, this is the operative report,

14

this is the assistant who was helping Dr. Trusler and

15

he wrote this report, and he said:

16

"The pulmonary artery and infundibulum

17

were incised, the pulmonary valve was

18

grossly atretic;"

19

so that means that there was no hole at all and that

20

there is a complete obstruction of the right ventricular outflow tract?

21

Q. You are referring to about a

22

third of the way down?

23

A. Yes, that is right, you will

24

see that it says:

25



E.19

1

2

"The pulmonary artery and

3

infundibulum were incised, the

4

pulmonary valve was grossly atretic;

5

it was incised."

6

In other words, they took it right out.

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Q. So that would indicate that the condition was pulmonary atresia?

A. Yes, yes. That has a very ominous prognosis. Very few patients, no matter what is done, actually survive to adult life.

Q. Well, pulmonary stenosis I gather is severe enough?

A. If it is critical pulmonary stenosis it also is a very serious disease but the chances of survival on long term are a little bit better than pulmonary atresia with an intact ventricular septum.

Q. All right. So pulmonary atresia carries a less favourable prognosis?

A. Yes.

Q. Turning then to page 160 and 161 of the chart. You made reference I believe in your evidence in chief through Mr. Lamek to the child having had an expisode of aspiration, on the 5th of March.

A. Yes.

Q. Do you recall that?

A. I don't remember that specifically.

Q. Well, I wanted to ask you about



1

2

that because that was my recollection of the evidence
that you said the child aspirated on the 5th of March
and that was why it was sent to the ICU?

4

A. Yes, yes, that's right.

5

Q. Do you recall that?

6

A. Yes, and this appears to be the
situation on the 5th of March on that page.

7

8

Q. Are you able to point to that
reference? You are probably better at reading these
notes than I am. Can I take you to page 159?

10

11

A. 159, okay. This is an admission
note and that was written by Dr. Spier, I presume it
is a doctor. He had an aspiration pneumonia today
and that was the reason for transfer to the intensive
care.

12

13

14

15

Q. Does that mean in effect that
there has been aspiration?

16

17

A. Yes. I would have assumed so.
Of course, this is quite a serious thing particularly
in very sick children who are just getting over
serious heart surgery because they have problems with
lung function anyway and if you add the insult of
having gastric material into the lungs and all the
irritation that that causes, they get very much sicker.

18

19

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22

23

Q. And in your experience with

24

25



1
2 pulmonary atresia or pulmonary stenosis, is aspiration
3 something that happens with babies in that condition?

4 A. I don't think that is specific
5 to that condition, just any sick infant who has had
6 particularly recent cardiac surgery is subject to
7 that type of complication. It is not specific to that
8 disease.

9 Q. Well, let me put it to you this
10 way. A child with that disease who aspirates is the
11 aspiration itself something that may well throw the
12 child over the brink and cause death?

13 A. Yes, yes, that's very true.

14 Q. And if you will take it from me
15 as a fact that after the child's arrest the child's
16 mouth was opened and it was found to be full of food,
17 and the reference is at page 183.

18 A. 183. Yes.

19 Q. Dr. Costigan's report just three
20 lines down.

21 A. Yes.

22 Q. "On opening mouth full of food
23 some also on pillow."

24 Do you see that? Page 183, three lines down.

25 A. When opening the mouth, yes,
that's right.



1

2

Q. "On opening mouth full of food
some also on pillow".

3

4

A. Yes.

5

Q. Would that indicate to you,
Doctor, that the child had vomitted?

6

A. It would suggest that.

7

8

Q. And when the child vomitted I
take it there is a possibility of aspiration?

9

A. Yes.

10

11

12

13

Q. And in light of the previous
aspiration episode on the 5th of March, do you think
there is a distinct possibility that the child may
have aspirated and that that may account for its
death?

14

A. It's a possibility.

15

16

17

Q. And of course we can't be sure
obviously because there was no post mortem done on
the child?

18

A. Yes.

19

Q. Is that so?

20

A. Yes, yes, true.

21

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Q. Doctor, you started out, or when
we started out this examination I was asking you about
the changes in your experience with respect to the
drug digoxin and we talked about the radioimmunoassay



1
2 method and so on which, as I understand it, came in in
3 the early 1970's, is that correct?

4 A. Yes, this is my understanding,
5 yes.

6 Q. And obviously that fact itself,
7 radioimmunoassay has changed your knowledge about the
8 drug digoxin and how it works?

9 A. Yes, that's true.

10 Q. And would I be accurate in
11 thinking that the events of the last two years have
12 also changed your knowledge about digoxin?

13 A. Yes, very definitely.

14 Q. I think it would be of assistance
15 to us, Doctor, if you could tell us as a cardiologist
16 how your knowledge about digoxin has changed in the
17 past, let us say, two years?

18 A. Well, I think we have learned a
19 great deal about the pharmacology of digoxin and its
20 distribution in the body and particularly the problems
21 with the immunoassay and the fact that it isn't as
22 specific as we originally thought. I think the great
23 knowledge I think in terms of - I am not as you
24 realize - I am a practitioner and I am just going to
25 tell you what it means in terms of --

THE COMMISSIONER: But the question



1
2 was as a cardiologist what have you learned?

3 THE WITNESS: Yes.

4 THE COMMISSIONER: And that may well
5 be that it is of interest to know what as a cardi-
6 ologist he has learned but he is not an expert. Is
7 there some - is this leading anywhere?

8 MR. STRATHY: Well, I think it is,
9 I think we are entitled --

10 THE COMMISSIONER: Well, I know it is
11 leading to what his views are, but are his views
12 valuable? We're going to have a little over a million
13 pharmacologists in due course. Would it not be better
14 to wait for them?

15 MR. STRATHY: Well, I think we are all
16 looking forward to the pharmacological evidence.

17 THE COMMISSIONER: Yes, but I mean,
18 what help does it have? I mean, we might ask Mr.
19 Lamek what his views are but I'm not that interested,
20 and I am not insulting him.

21 MR. STRATHY: The difference is that
22 we have a cardiologist here, Mr. Commissioner.

23 THE COMMISSIONER: Yes, all right,
24 okay.

25 MR. STRATHY: I think it is useful to
know --



1
2 THE COMMISSIONER: Ordinarily there
3 would be at least 12 counsel standing on their feet
4 screaming at this kind of question because you
5 haven't qualified the witness as an expert or
6 anything. You are asking as a cardiologist what does
7 he know about digoxin and again you might ask someone
8 as a lawyer what you know about pig farming. Now,
9 it's not quite the same but it is the same legal
principle.

10 MR. STRATHY: Well, the doctor is a
11 cardiologist in pediatrics of 30 years' experience of
12 treating children.

13 THE COMMISSIONER: Who knows more than
14 I do I will concede on that part, but he doesn't know
15 as much as a pharmacologist. Am I out of line when I
say that?

16 THE WITNESS: Certainly. Absolutely
17 not.

18 THE COMMISSIONER: Well, shouldn't we
19 wait for the pharmacologists?

20 MR. STRATHY: Well, I qualified my
21 question as asking him as a cardiologist and I think
22 as a cardiologist he is entitled to give his opinion
23 about the effects of a drug as he uses it and what he
24 knows about it.
25



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2

THE COMMISSIONER: All right. I have
lost that battle I can see.

4

MR. STRATHY: It might be shorter to
see if the witness can answer the question.

5

6

THE COMMISSIONER: Yes, all right.

7

8

MR. STRATHY: Q. Doctor, can you
help us in any other ways your knowledge about
digoxin has changed?

9

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A. I think that there are things
about what happens to digoxin after death and during
arrests and that sort of thing that I had not learned
or thought of before that I have learned, but this is
with particular reference to the proceedings that are
going on here and I don't know that they are important
for the treatment of patients.

15

16

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We have known the levels and how
important they are and how we use them in adjusting
the doses of digoxin long before the last two years.
But the pharmacology is the thing that's new and it
is our knowledge of what's happening to digoxin under
various circumstances, and I say this is a basic sort
of problem that has to be addressed to somebody else.

22

23

24

25

Q. Well, let me put one thing to
you, just one thing that you have mentioned already.
This business about an endogenous digoxin-like
substance.



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THE COMMISSIONER: I am sorry, I am
sorry. Yes, Mr. Marshall?

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MR. MARSHALL: I don't want to
discourage this debate that's going on, Mr.
Commissioner, but, and it may be my fault for not
being here for part of yesterday, but do we know what
this witness' understanding was about digoxin before
anything changed over the year and a half? Is there
any sense to find out what changed unless we know what
it was that --

11

12

13

THE COMMISSIONER: Well, what changed
I think are the studies that the pharmacologists have
made.

14

15

16

MR. MARSHALL: I just asked a simple
question about, do we know what the witness' under-
standing was about this subject matter back in March
of 1981?

17

18

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THE COMMISSIONER: Well, I guess, I
suppose we could let him answer but I think what was
said was that if you put a great deal of faith in
the readings, including the post mortem readings,
now with the developments and the digoxin study by
the pharmacologist he puts less faith in them.

23

24

25

Now, that's not a very profound
statement but it all still depends upon the validity



1
2 of what the pharmacologists have discovered.

3 MR. MARSHALL: I understand all of
4 that, I am not wishing to involve myself in any
5 debate, I was here and I heard most of that evidence
6 but I am just wondering if we're to talk about how
7 his understanding changed we should know what it was
8 his understanding was before the change affected it.

8 MR. STRATHY: Well, I can go back.

9 THE COMMISSIONER: Well, I don't
10 particularly want to know what he used to think.
11 It might be even better to know what he now thinks
12 than what he used to think, but what I am really
13 getting at is that I don't really care about either.

14 MR. SCOTT: I guess, Mr. Commissioner,
15 you thought that Mr. Marshall was going to put a motion
16 that would deliver you from your agony.

16 THE COMMISSIONER: Yes, right.

17 MR. SCOTT: In fact, he has asked that
18 the matter should be fully expanded and pursued.

19 THE COMMISSIONER: Right.

20 MR. STRATHY: Let me try and satisfy
21 everybody at once.

22 Q. Doctor, before 1981 you did not
23 know about this endogenous digoxin-like substance,
24 did you?
25



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2

A. No, that's true.

3

4

5

Q. And obviously as a cardiologist the knowledge of that substance now is something that is important to you in the interpretation of those levels?

6

7

A. Yes.

8

Q. And in the treatment of the children?

9

10

11

12

A. Yes. But of course there is a lot of work to be done and we don't have a full understanding about this whole field of the non-digoxin substance.

13

14

Q. I appreciate that. So, the whole effect of this digoxin-like substance is to change the way you as a cardiologist interpret these levels?

15

16

A. Yes, that's true.

17

Q. And you can't be as certain as perhaps you once were?

18

A. That's true.

19

MR. STRATHY: Thank you, those are my questions.

20

21

THE COMMISSIONER: Yes, thank you, Mr. Strathy. Mr. Percival?

22

CROSS-EXAMINATION BY MR. PERCIVAL:

23

24

25

Q. Dr. Fowler, yesterday at page 6177



1
2 the Commissioner asked you a question in relation to
3 whether the situation had improved since the
4 implementation of the intermediate ICU unit?

5 A. Yes.

6 Q. And you indicated to him in the
7 affirmative that that intermediate ICU unit was not
8 commenced in your hospital until the fall of 1982?

9 A. I am not sure of the actual
10 date when that was.

11 Q. Was it in the year 1982?

12 A. I can't tell you that either.

13 Q. Well, what I would like to know
14 is, after the police investigation and the charges
15 were laid in relation to this matter, did the
16 situation improve up until the time of the intermediate
17 ICU?

18 A. I think the situation did improve,
19 as you can see from the chart.

20 Q. All right. If there were strange
21 things happening up until March 22nd of 1983 the
22 strange things stopped?

23 MR. SCOTT: 1983?

24 MR. PERCIVAL: After March 22nd, 1981?

25 THE WITNESS: No, I wouldn't agree
with that.



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2

MR. PERCIVAL: Q. Oh, all right.

3

You mean you still have strange things happening in

4

4A and 4B?

5

A. We have clustering that keeps going on. Look at the death rate in the hospital.

6

Q. All right.

7

MR. SCOTT: It may be that the doctor

8

is referring to the police investigation, it went on ...

9

MR. PERCIVAL: I thought it was the

10

connection with his Counsel.

11

MR. STRATHY: I'm sorry, in the course

12

of all this I missed the answer by the witness.

13

MR. PERCIVAL: He said look at all

14

the clustering that is going on. Did I say that

15

fairly?

16

THE WITNESS: That's true, and this

17

happened, this is still going on.

18

MR. PERCIVAL: Q. All right. One

19

of the things that I was intrigued by yesterday in

20

your evidence was at page 6060 to 6065 and about

21

your perception of the way nurses worked in the

22

hospital, particularly on wards 4A and 4B. Do I

23

take it your evidence is very clear that up until the

24

time the police suggested to you that there was the

25

same team of nurses involved that you never knew up



1
2 to that moment in time that there was such a thing as
3 a team of nurses in wards 4A and 4B?

4 A. That worked together, that's
5 true.

6 Q. All right. Well, are you
7 seriously suggesting to me as the chief of clinical
8 services, the troubleshooter, the person who dealt
9 with the nurses, that you had never heard the
expression 'team leader'?

10 A. Yes, I am familiar with that
11 term.

12 Q. If you are a team leader what's
13 the team?

14 A. Yes.

15 Q. What does the word 'team' mean
16 then if you're familiar with the words 'team leader'?

17 A. I understood that that was a
18 leader of a group of nurses.

19 Q. All right, and a group of nurses
20 that was relatively constant insofar as 4A and 4B?

21 A. No, I'm not, that's what I don't
22 know. I understood nurses came and went and they're
23 on different shifts and so on and I wasn't aware of
24 the fact that a specific group of nurses always go
25 together.



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Q. Well, you were ward chief in the month of March?

A. Yes.

Q. You were ward chief in the month of November of '80, the ward chief in September of '80, according to your evidence?

A. Correct.

Q. In fact, of all the cardiologists you happened to be ward chief more than anyone else in the course of the 12 or 14 months that wards 4A and 4B were in existence?

A. Yes.

Q. Is that correct?

A. Correct.

Q. As ward chief then that you were more consistently on the floor seeing what was happening to the babies on the ward?

A. I was making - yes, I was making rounds with the residents and with the nurses.

Q. And it never never dawned on you that there seemed to be the same sequence of nurses in association with each other up until the time the police came in on March 22nd or March 23rd of 1981?

A. Yes, that's very true, and the



1
2 reason is that although I am ward chief for the month
3 I make rounds on the wards three times a week, taking
4 two or three hours with one senior nurse and then I
5 see new admissions and I look at problems on the ward
6 and the rest of the time I'm not on the ward and I'm
7 not familiar with how the nurses organize their time
8 at all.

8 Q. Well, Dr. Fowler, you knew up
9 until the time the police became involved that there
10 was nurses who were getting greatly concerned about
11 the frequency of deaths on wards 4A and 4B and there
12 was even some suggestion from your bosses or your
13 associates that there be some psychotherapy given to
14 them, were you not, prior to this?

14 A. I was not aware of that at all.

15 Q. All right. In any event, Kevin
16 Pacsai died on March 11th and I believe you gave
17 evidence to the effect that some time thereafter you
18 became aware of the digoxin levels in that baby?

19 A. That's correct.

20 Q. Do you remember when that was?

21 A. I'm not sure but I've been told
22 that it is I think the 18th.

23 Q. All right. At that particular
24 time I gather when the Coroner was involved,
25



1

2

Dr. Teperman, there was a close liaison between you,
Dr. Rowe and Dr. Carver about the strange events that
were happening in wards 4A and 4B?

4

5

6

A. No, there was no relationship
at all with Dr. Carver, Dr. Rowe and myself until
that Saturday afternoon.

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RCHSC

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Fowler,
cr.ex. (Percival)

6341

Sept.14/83

G-1

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Q. Do I take it then that

EMTeg

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even though you know on that Saturday afternoon
3 there were some problems about Estrella and some
4 problems about Pacsai with respect to digoxin that
5 nothing at all had been done by you or anybody to
6 your knowledge with respect to checking digoxin
7 levels in the individual wards to see if there had
8 been a depletion, for instance, of digoxin, or
9 any unusual use of it?

9

A. On the 19th and the 20th

10

I looked into that on the ward after recognizing -
11 after knowing what Pacsai's results were.

11

12

Prior to that, as you know, there
13 were 15,000 levels of digoxin drawn during this
14 period, so we were aware - we were looking at the
15 possibility of high doses of digoxin.

15

Q. All right.

16

A. All that time.

17

Q. Do I take it then at least

18

on the 18th and 19th it crossed your mind that
19 somebody was administering digoxin inappropriately?

19

20

A. No. I did not think at

21

that time that this was a possible intentional
22 overdose.

22

Q. I didn't -

23

A. I still felt that it was an

24

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G-2

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accidental - it could have been accidental.

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Q. But why would you be

looking into it on the 18th and 19th? Why would

you be looking into it at that time if you didn't

think somebody was giving it inappropriately in

excessive amounts?

A. That is what we were looking

at.

Q. All right. So then do I

take it the reason you were looking at it the 18th

and 19th you were concerned that somebody may have

been giving it inappropriately to the babies on

Wards 4A and 4B and in excessive amounts? Can we

agree on that?

A. No. I was looking at the

routines on 4A in regard to digoxin to see if some

accidental overdose was given to one patient Pacsai.

That is the only one that I am concerned of at that

time, and that is what I was looking into

specifically -

Q. All right.

A. - and I have given my report.

Q. Tell me, what did you look

into? Did you go and talk to the head nurse?

A. Yes.



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Q. Did you do anything else
other than talk to the head nurse?

A. Well, that is all in my
report, and that was some -

Q. Dr. Fowler, I want you to
tell me what you did. Did you do anything else
aside from talking to the head nurse. Forget about
what is in your report. I want to know what you
can recall now as to what you did.

A. But it is in the report
that I wrote at that time. That is more accurate
than me trying to recall it two years ago.

MR. PERCIVAL: Or perhaps, Mr.
Scott, you -

THE WITNESS: Perhaps you could read
it to me and I will comment.

MR. PERCIVAL: I thought you would
have it, sir, I am sorry.

MR. SCOTT: I don't know that we
have it here. We may be able to get it over the
lunch.

MR. PERCIVAL: I thought it was
marked as an exhibit.

MR. SCOTT: It may be in already.

THE COMMISSIONER: I thought -

MR. PERCIVAL: I thought it was the



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one that was made some reference to in Dr. Freedom's -

3

MR. SCOTT: Yes, I put it in.

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MR. PERCIVAL: Yes.

5

MR. SCOTT: Now I forget the number.

6

MR. LAMEK: I think it is 110.

7

MR. PERCIVAL: May we have that,
Mr. Elliot. Thank you.

8

MR. SCOTT: Yes, it is 110. Perhaps,

9

Dr. Fowler, if you were shown it and read it -

10

MR. PERCIVAL: I thought that is
what I was doing, Mr. Scott.

11

MR. SCOTT: I am just speaking to

12

myself.

13

THE WITNESS: So we talked to the

14

head nurse. She had interviews with the appropriate
people that were giving the digoxin and she was -

15

MR. PERCIVAL: Q. Dr. Fowler,

16

please don't talk about "we". I want to know what
you did, please.

17

A. All right, I did.

18

Q. Thank you. You talked to

19

who?

20

A. I talked to the head nurse.

21

Q. Which is whom?

22

A. Liz Radojewski.

23

24

25



G5

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Q. Yes.

3

A. And we reviewed the

4

administration of digoxin to this patient. She
then -

5

Q. How did you review it?

6

A. We looked at the chart.

7

Q. Yes. Anything else?

8

A. And then she talked

9

personally with the girls who were involved, and

10

that was one aspect. And as I say, I am not a

11

skilled investigator. I -

12

Q. No, Dr. Fowler -

13

A. This is the first time I

14

ever had to do this, but I am telling you what I

15

did. The next thing I did, if you want to go

16

through it, I took a one and a half - she said that

17

the amount of one and a half bottles of digoxin

18

was consumed on the ward and there was no increase

19

in that during the ward - during the last recent

20

time.

Q. Who is she?

21

A. This is the head nurse.

22

Q. All right. Nurse Radojewski?

23

A. Yes.

24

Q. Yes?

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A. An aliquot of two mils of the stock on the ward was sent to the bio-chemistry department.

Q. Did you do that?

A. Someone else - no, someone took that. I didn't personally do that, but -

Q. Dr. Fowler, my question very simply is what you did.

A. Yes.

Q. That is all I want to know.

A. Yes. I had that sent to biochemistry.

Q. You directed that it be sent?

A. That it be sent there.

Q. Thank you.

A. And I got a verbal report that the concentration of that drug was correct, what it was supposed to be.

We then -

Q. Don't talk about "we". Talk about yourself.

A. I then asked that someone in pharmacy go to phone Wellcome Company to ask them to look into the specific lot or lots of



G7

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digoxin that have been delivered to the Hospital.

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Q. Where is that in your

4

memorandum?

5

A. That isn't in this memo.

6

Q. All right.

7

A. But I actually did that.

8

Q. All right.

9

A. I did it. I asked somebody

10

to do it for me and then I got a verbal report back

11

and I was - to the effect that there was nothing

12

wrong with the lot that they could tell that was

delivered to the Hospital for Sick Children.

13

And then we - Dr. Carver was

14

concerned that there might be some legal problems

15

with this patient so he had the chart photocopied,

16

and then Dr. Freedom has agreed to have a

17

pathology conference on this patient after the

18

post mortem was done and the sections done, we

19

were going to get Dr. Teperman to come to that
conference -

20

Q. Right.

21

A. - and we were going to

22

discuss. This was before all these other things

23

happened.

24

Q. I understand. The date on

25



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the memorandum is March 20th, 1981?

A. Yes.

Q. That is Friday, March 20th?

A. Yes.

Q. All right. Just stop for
a moment at that point.

Do I take it then that you discussed
this with Dr. Teperman, the fact that Kevin Pacsai
and what you have proposed for him? You said that
Dr. Freedom agreed to chair, to set up a pathology
conference?

A. Yes.

Q. Did you speak to him?

A. No. Dr. Freedom agreed to
do that.

Q. But how did he agree? Did
he say that to you?

A. Yes.

Q. So I gather you talked to
him?

A. Yes.

Q. So therefore do I take it
that you talked to him about the Pacsai case?

A. Yes.

Q. He agreed that he would chair



1
G9 2 a pathology conference?

3 A. Yes.

4 Q. All right. And he therefore
5 at that point knew that Dr. Teperman would be
6 involved as well?

7 A. Yes, because he was going
8 to invite Dr. Teperman to come to the conference.

9 Q. You knew at that time -
10 well, have you told me everything else that you had
11 done between Pacsai and Miller, the two deaths?
12 That you did personally with respect to the digoxin
13 levels in Pacsai? Anything more?

14 A. I can't remember anything
15 further.

16 Q. Okay. Well, in particular
17 did you speak to either - and I notice in your
18 memorandum, again as an aside on March 20th, 1981
19 you say:

20 "I reviewed the chart with Liz
21 and Diane Crossman, one of the team
22 leaders on the ward."

23 A. Yes.

24 Q. So I gather you must have
25 been familiar at least on March 20th with the
utilization of the word?



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A. I knew that Diane Crossman was a team leader.

Q. Did you yourself interview either Phyllis Trayner who was the team leader the night Kevin Pacsai died or Susan Nelles who was the person who was apparently with Kevin Pacsai and administered the last digoxin to him?

A. No, I didn't interview them.

Q. So do I take it you didn't speak to them during that time interval between Pacsai's death and Miller's death?

A. Not to my knowledge.

Q. All right. Do I take it that at that point, that is Friday, when you dictated the memorandum, and then on Saturday morning you became involved with Baby Cook?

A. Yes.

Q. And you became involved with Baby Cook in the sense that you examined the Cook baby on Saturday morning, March 21st, and then decided that the baby would benefit from a heart catheterization which was subsequently arranged to be done by Dr. Freedom?

A. That is correct.

Q. The baby was cyanotic and



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you felt that if anything the baby would benefit from
inderol?

A. That is correct.

Q. And were you there then
the morning of Saturday, March 20th?

A. Yes.

Q. Then you went, as I under-
stand it, you left the heart catheterization to Dr.
Freedom?

A. Yes.

MR. PERCIVAL: Would you put, Mr.
Elliot, before the witness Exhibit 116, please,
which is the records of Justin Cook, medical records,
Mr. Commissioner.

Q. Now that Saturday we know
that a heart catheterization was done by Dr. Freedom,
Dr. Fowler?

A. Yes.

Q. And it would appear on
page 26 of the records that the baby Justin Cook
returned to Ward 4A or 4B from the catheter lab
at 1315 hours. At the bottom of the page. Do you
see that on page 26?

A. Yes.

Q. So that presumably he had



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had the catheterization by 1:15 and was back on the ward?

A. Yes.

Q. Right. Now that was about the same time as you and Dr. Carver and other members of the Hospital were going over to the Coroner's Office?

A. Yes. It is about that time, yes.

Q. Right. Now you had Dr. Jedeikin I gather who was a cardiology resident who was on call that weekend -

A. He is a Fellow.

Q. He is a Fellow? Right. And you knew that Kevin Cook baby - or Justin Cook baby was cyanotic and would benefit from inderol?

A. Yes.

Q. You have already told Mr. Strathy that certainly digoxin would be contraindicated for this baby?

A. Yes.

Q. You have already told Mr. Strathy that everybody should know that?

A. I can't guarantee that, but that is something that many people would - should



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know who are working on a ward.

Q. Whether or not you are a resident, a Fellow, a team leader or a nurse, giving active nursing care to these babies?

A. Yes.

Q. You would like to think they are experienced enough to know that?

A. Yes.

Q. That inderol is the direct opposite or antithesis of digoxin?

A. Yes.

Q. Thank you. Now after the Coroner's meeting you went home and I want to start taking you from the Coroner's meeting onward.

A. Right.

Q. Mr. Hunt has reviewed that in detail with you, sir.

Did you go home after the Coroner's meeting?

A. I think I went out to dinner.

Q. All right. Well, at some point in that evening you were called by Dr. Jedeikin?

A. Yes.



G-14

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Q. About Justin Cook?

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A. Yes.

4

Q. Is that correct?

5

A. I thought that was later in

the evening.

6

Q. Well, perhaps if you can

7

look at - wasn't the call from Dr. Jedeikin because

8

the baby had taken another blue spell?

9

A. Yes.

10

Q. Or had become cyanotic?

11

A. Yes.

12

Q. And he was checking with

you to see if you agreed with his course of treatment?

13

A. Yes.

14

Q. All right. And if you

15

would look with me on page 25 it would appear that

16

Dr. Jedeikin at 1820 hours or 6:20 p.m. on Saturday

17

the 21st - have you got that in front of you, Dr.

18

Fowler?

19

A. Yes. Yes, I have.

20

Q. - indicated at 1800 hours

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the child was screaming and very blue and that there
was a spell.

22

What sort of spell is that? I

23

don't understand that.

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A. This is a characteristic spell that people who have certain types of cyanotic heart disease have in which they become very distressed, extremely blue, and actually can lose consciousness if it isn't treated appropriately.

Q. All right. In any event Dr. Jedeikin was there, provided some inderol for the baby, and indicated at the bottom of his note, "strict supervision of child"?

A. Yes.

Q. Is that correct?

A. Yes.

Q. Does that refresh your recollection of the time frame within which you were perhaps called by Dr. Jedeikin about Justin Cook and about another blue spell?

A. I am not quite sure that Dr. Jedeikin would have phoned me about that particular spell.

Q. Well -

A. He may have.

Q. Did he call you about one spell?

A. Yes, later at night, but I am not - you see this is the routine thing that we do



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with these babies, and he may have phoned me; he might not.

Q. All right.

A. I can't remember.

Q. Well, all right. Then do I take it that at some point in time you were called, and I believe you have indicated already at 2000 hours or 8:00 p.m. -

A. Yes.

Q. - you were made aware of the Allana Miller digoxin levels by Dr. Carver?

A. Yes.

Q. And where were you at that time when you were made aware of that, Dr. Fowler?

A. I was just coming back from dinner.

Q. All right. At that point then did you go to the Hospital?

A. I came down -

Q. All right.

A. - because Dr. Carver wanted to have an urgent meeting with several of us right away.

Q. All right.

A. To see what we can do.



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Q. You went to the ward, and
did you see Justin Cook that evening?

A. I am not sure that I went
to the ward.

Q. All right.

A. I think I went to Dr.
Carver's - now I may have gone to the ward.

Q. All right.

A. I don't remember seeing him
at that time. I knew I came to the Hospital to see
Dr. Carver so I may not have gone to the ward.

Q. In any event you saw Dr.
Carver and there was a discussion about Allana
Miller; there was a discussion about the Coroner -

A. Yes.

Q. - and this particular document,
Exhibit 165, was created. Was there a typist there
at 10:25 in the evening of Saturday, March 21st, or
was this something done in a handwritten memorandum
and later typewritten? Or do you have any recollection?

A. I would think almost surely
that there wasn't a typist there.

Q. All right.

A. On that Saturday night.

Q. Well then -



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A. So it is likely to have been transcribed later.

Q. I ask the same question that the Commissioner has already asked: it was confidential. It doesn't say memorandum to anybody. It just says Saturday at 2225 hours, and then there seems to be certain orders, and presumably the author of this was Dr. Carver?

A. Yes. I think he was the one that originated that.

Q. Yes?

A. But his name isn't down there as the person ...

Q. All right. What I am getting at is this: you must have discussed these with Dr. Carver?

A. That was the purpose of our meeting.

Q. And was that - these were to be protective mechanisms to be implemented in the Hospital?

A. Yes.

Q. To ensure that if strange things were happening they would be prevented in the future?



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A. This was our hope.

Q. All right. Now do I take it then that you left the Hospital at some point in time?

A. Yes. I am not sure when. Around midnight perhaps.

Q. Do I take it that if this memorandum was created at 10:25 p.m., do I take it that you don't know whether it was implemented in fact on Wards 4A and 4B in that shift from 7 p.m. on Saturday, March 21st, to 7 a.m. on March 22nd.

A. No, I can't give direct knowledge, but my understanding was that Dr. Mountstephen and Dr. Costigan immediately the meeting was over, in conjunction with the night supervising nurse began to do this all through the Hospital at that time around midnight -

Q. Well -

A. - but I have no direct knowledge that that was done.

Q. Did you ever make inquiries? Now surely to goodness four hours later Justin Cook was dead and within another six hours you knew there was digoxin. Did you not say to yourself, well, we did this at 10:25 on Saturday night. What in fact



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occurred up until Justin Cook's death?

Have you never made those inquiries even to this present day?

A. No, I haven't.

Q. All right. In any event you have already indicated to Mr. Strathy that inderol was prescribed for Justin Cook; digoxin was contraindicated. At some point in time you went to bed that evening. You went to bed?

A. Yes. Briefly.

Q. And you were wakened up by a phone call from Dr. Jedeikin?

A. Yes.

Q. And the phone call from Dr. Jedeikin was on the morning of Sunday, March 22nd, and do you remember what time it was?

A. I don't know but -

Q. Well what was the information -

MR. SCOTT: He was going to give you an estimate.

MR. PERCIVAL: No, no. I am sorry.

MR. SCOTT: He said I don't know but.

MR. PERCIVAL: I want to help him.

THE COMMISSIONER: I think but it



G-21

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2

was early. Isn't that what you were going to say?

3

MR. PERCIVAL: Q. Doctor, were you

4

made aware that the baby was alive or dead when Dr.

5

Jedeikin called?

6

A. He phoned and as I remember

7

it the child had died.

8

Q. All right. Well, we know

9

if we look at Exhibit 116 that the arrest of this

10

baby was at 4:20 a.m. and he died at 4:56 a.m., at

11

least according to that exhibit, and that is pages

12

28, 29 and 30, Mr. Commissioner.

13

A. Yes.

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DM.jc
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Q. Page 30 seems to be the recent arrest information involving the medication. Do you agree with me, Doctor?

A. Yes.

Q. Well do I take it then that if your recollection is Dr. Jedeikin called you, and the baby was dead, so it had to be 5 o'clock or thereafter?

A. Yes.

Q. And you were very surprised to hear that Justin Cook had died?

A. Yes.

Q. And did you at that point, because of your prior knowledge involving Estrella, Pacsai, Miller, ask Dr. Jedeikin to do certain things about this baby?

A. Yes.

Q. What did you ask him to do?

A. I asked him to be sure to get the dig. level from the body. I then phoned Dr. Carver ---

Q. I just want to deal with Dr. Jedeikin, what did you ask him to do, just get a dig. level from the bottle?

A. No, from the body.



H.2

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Q. From the body?

3

A. Yes.

4

Q. Thank you.

5

A. And then I phoned - do you want me to continue?

6

Q. Let's deal with just Dr. Jedeikin.

7

Did you ask him to do anything else?

8

A. I can't remember other

9

instructions, but that was the most important thing

10

I wanted him to do.

11

Q. Did you ask him to secure the

12

IV line and also ask him to take a sample of substance that was in the IV?

13

A. I subsequently asked him to do

14

that after talking to Dr. Carver.

15

Q. So do I take it then you had a

16

phone call with Dr. Jedeikin, and then you called

17

Dr. Carver?

18

A. Yes.

19

Q. And did Dr. Carver ask you to

20

do something and then you called ---

21

A. Then he suggested that we

22

should do sort of a screen for all sorts of drugs in

23

addition to digoxin, and also suggested that we get

24

the contents of the IV tubing and bag.

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H.3

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THE COMMISSIONER: I am sorry, was this Jedeikin or Carver?

THE WITNESS: Dr. Carver asked me to have Dr. Jedeikin do that on the spot.

MR. PERCIVAL: Q. All right. Then did you then pick up the phone again from your home and phone Dr. Jedeikin and tell him to do that?

A. Yes.

Q. And your recollection is all of this some time within a 20-minute period you had those three phone calls?

A. I suppose that is true.

Q. Well, it was a matter of urgency I gather at that point and concern for you?

A. Of course.

Q. Well, it was a matter of urgency, concern and anxiety that you immediately then put your clothes on and got into your car and drove down to the Hospital?

A. Yes.

Q. And do I take it that you felt you should go down to the Hospital because you had so many strange things happening on this ward up to that point?

A. I perhaps shouldn't say strange,



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but we had had a moderate number of deaths to that time, which we thought we had explained on natural causes, or possible accident. This was the first time I really wondered if there was an intentional problem going on, and I thought I should go down and see what was going on.

Q. Dr. Fowler, the word is yours and you used it on an earlier occasion, that is on February 17th, 1982, page 43. Do you recall giving evidence at the Preliminary Hearing involving charges against Susan Nelles?

A. Yes.

Q. And your words are, at line 10, page 43 of Volume 19:

"I heard from Dr. Jedeikin that he - the next thing I heard was that the child had another blue spell and couldn't be resuscitated. So at this time we had had so many strange things going on on the ward that I felt I should go down to the Hospital, which I did."

Do you recall giving that evidence?

A. Yes.

Q. And was it true?



H.5

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A. Yes.

3

Q. Do I take it then that you

4

utilized the word "strange" on another occasion?

5

A. Yes.

6

Q. And under oath?

7

A. Yes.

8

Q. Thank you. I suggest to you,

9

Doctor, that the reason that you went down to the

10

Hospital, and you reason you went to the ward was

11

because of your concern and anxiety about what was
happening in your Hospital?

12

A. Yes.

13

Q. And that is understandable. But

14

one of the other reasons, sir, that you went down to

15

the ward because you were anxious to check on the

16

reaction of the staff on this ward to the death of
Baby Cook?

17

A. Yes.

18

Q. And you knew by this time, I

19

suggest, that the nurses that were on that shift might

20

have been the same nurses that had been on the shift

21

the night before when Allana Miller had died?

22

A. I didn't know that, but I ---

23

Q. You suspected it?

24

A. ... but it is conceivable that

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was the case, yes.



H.6

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Q. So when you went down, Doctor,
do I take it that the names of the people that you
knew about that might have been involved with Pacsai
and Miller had been Susan Nelles and Phyllis Trayner?

A. Yes.

Q. And you knew Susan Nelles before
that early morning hours of Sunday, March 22nd?

A. Yes, I knew who she was.

Q. Well, you also knew her father?

A. Yes.

Q. You went to medical school with
him?

A. No, he was a resident in the
hospital.

Q. But in any event you knew her,
and knew her name, and knew about her long before
Sunday, March the 22nd?

A. I didn't know a lot about her,
I recognized her and I knew that she was his daughter.

Q. You also knew that she had
been involved with the Pacsai and Hines babies as well?

A. Yes.

Q. And had been involved in the
terminal events of both those babies, is that correct?

A. I am not sure that I knew that



H.7

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she was involved in those two babies, but I may well have known that.

3

4

Q. What did you expect when you arrived on the ward that day, or the early morning hours?

5

6

A. I didn't know what to expect.

7

8

Q. What did you expect to be the reactions of the staff?

9

10

A. I would have thought that they would be quite upset.

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MR. SCOTT: Mr. Commissioner, I just raise it but I don't object to the question. If this phrasing is going to be meaningful some decisions are going to have to be made. I don't object to the question. If Phase 1 and Phase 2 are to remain separated for the balance of the Inquiry, we have got to take some steps to decide what is to go in those phases.

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THE COMMISSIONER: Well, I don't have much trouble, this obviously may well have something to do, might well have something to do with the cause of death.

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22

MR. PERCIVAL: That's right.

23

THE COMMISSIONER: But carry on.

24

MR. PERCIVAL: Because the police hadn't even arrived at the Hospital yet.

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H.8

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THE COMMISSIONER: Mr. Scott is ---

3

MR. SCOTT: I don't object to it.

4

THE COMMISSIONER: Mr. Scott has made
a note of it for future use but I can't - sometimes we
can't make these ---

6

7

MR. PERCIVAL: Q. You have told me
you went down there to the ward because of the strange
things occurring. I gather you went down to take a
look at Baby Justin Cook?

8

9

10

A. Yes.

11

Q. You went down there to look at
the medical record about Justin Cook?

12

13

A. Yes.

14

Q. You went down there to make sure
that you knew what had transpired with respect to
Baby Justin Cook since you had last seen him on the
morning of Saturday, March 21st?

15

16

17

A. Yes.

18

Q. And you were concerned, I
suggest to you, that this may be an extension of the
pattern of strange things happening in Wards 4A and 4B?

19

20

A. Yes.

21

Q. And when you went down there
did you talk to Dr. Jedeikin?

22

23

A. Yes.

24

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H.9

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Q. And was Dr. Jedeikin unhappy?

3

A. Oh, he was very upset, because

4

he of course was on duty on the weekend and then

5

perhaps had not recognized that we had been having

6

some other problems during that month.

7

Q. Well, the baby in question,

Justin Cook, was in Room 418, or do you recall that?

8

A. I am not sure what room he was in.

9

Q. All right. In any event did

10

you ask Dr. Jedeikin whether he had taken the samples

11

that you had asked him to do by phone?

12

A. Yes.

13

Q. And had he done them?

14

A. Yes, he said that he had, as I

remember.

15

Q. And were you then concerned

16

with reference to whether or not this baby, who should

17

never have been prescribed and given digoxin, had

18

died from digoxin poisoning?

19

A. I was afraid, I didn't know at

20

that instant what the levels were of digoxin, but I

21

was afraid that perhaps he had died of digoxin.

22

Q. Did you see from the terminal

events that the terminal events seemed to be

23

inconsistent with the cyanotic condition that you had

24

earlier observed yourself?

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A. No. This would be quite consistent with a patient with this very complex heart disease having a very bad cyanotic spell from which he did not survive.

Q. Did you look at the chart, and did you satisfy yourself on that, or was it just a cursory look at the chart, in fairness to you?

A. Well, because of the stress of the whole thing I didn't study it, but I discussed it with Dr. Jedeikin as we were viewing the body.

Q. Well, Doctor, you have told us Dr. Jedeikin was upset, what about the nurses?

A. They seemed to be --

MR. BROWN: With respect, Mr. Commissioner, I voice the same objection that Mr. Scott had.

MR. SCOTT: I didn't make it as an objection.

MR. BROWN: Not as an objection to the question but certainly as a concern as to a distinction of the phasing of this Inquiry. The reaction of the nurses to the death, I question the probative value in establishing the cause of death. If indeed Mr. Commissioner you do feel there may be some probative value I think it is incumbent upon



H.11

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Mr. Percival to lay the proper foundation that

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Dr. Fowler has some intimacy with a particular nurse,

4

and therefore would be able to gauge their reaction.

5

THE COMMISSIONER: I am not really

6

too concerned with your difficulties because you

7

obviously will be a part of both parts of this Inquiry.

8

I don't anticipate a report, although there may well

9

be argument on the cause of death, I don't anticipate

10

a report coming out until after both parts have been

completed.

11

How could you be prejudiced by this?

12

To me it does seem to have something to do with the

13

cause of death. How can you be prejudiced by this

question?

14

MR. BROWN: I submit in this case

15

the reactions do not have a relationship to the cause

16

of death. As to the prejudice I don't know, I haven't

17

heard the answer to the question.

18

THE COMMISSIONER: Well I am going

19

to allow the question in any event.

20

MR. PERCIVAL: Q. Dr. Fowler, maybe

21

I can be of great assistance to you, because your

22

recollection may be difficult. Let me read to you,

23

on February 17th, 1982, as to what you observed when

you went on to the ward that evening. It is on page

24

25



H.12

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45, Volume 19, Dr. Fowler's evidence under oath and
starting at line 27 and going on to 46.

3

4

THE COMMISSIONER: Well, I am sorry,
this isn't the usual way ---

5

6

MR. PERCIVAL: I know, my Lord.

7

THE COMMISSIONER: This isn't the
usual way to cross-examine. One usually asks him what
it is and if there is something ---

8

9

MR. PERCIVAL: Q. Perhaps you can
tell me, let's talk about Phyllis Trayner, she was the
team leader, the head on that ward?

11

12

A. Yes.

13

Q. When Justin Cook died?

14

A. Yes.

15

Q. What was her reaction? What
observations did you have of her at that moment in time?

16

A. She seemed to be upset.

17

Q. Was she crying?

18

A. Yes.

19

Q. Were there a number of other
nurses crying?

20

21

A. I am not familiar, there were
several other nurses around who were upset.

22

23

Q. So far as Phyllis Trayner was
concerned were her eyes filled with tears and red,

24

25



H.13

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2 she seemed very, very upset about the whole thing?

3 A. Yes.

4 Q. Did you see Susan Nelles?

5 THE COMMISSIONER: Well, are you
6 answering all those things "yes"?

7 THE WITNESS: Yes.

8 THE COMMISSIONER: Such as her eyes
9 were filled with tears?

10 THE WITNESS: Yes.

11 THE COMMISSIONER: She was crying?

12 THE WITNESS: Yes, he is simply
13 reading my evidence from a previous --

14 MR. PERCIVAL: How can I be fairer?

15 THE COMMISSIONER: I want you to tell
16 us what you remember first, if you can, or do you
17 remember?

18 THE WITNESS: Yes, I naturally
19 remember this episode very, very ---

20 THE COMMISSIONER: What I am worried
21 about was, he said, was she crying, were her eyes
22 filled with tears, was she very upset, and you said
23 "yes". Now, I don't know whether to all of those
24 things?

25 THE WITNESS: Yes. I am simply saying
that I said those things before.



H.14

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MR. PERCIVAL: Q Do you recall them
now, and do you recall them now?

4

A Yes, I remember that episode, yes.

5

Q I presume, Dr. Fowler, it was
a very traumatic time in your life?

6

A Yes.

7

THE COMMISSIONER: All right, we do
a lot of quibbling in the legal profession, but what
we want you to do first of all is tell us what you
remember now.

10

11

THE WITNESS: Yes.

12

THE COMMISSIONER: If you need the
assistance of your - I don't think you do from what
you have been saying, but if you need the assistance
of the Preliminary Inquiry you can look at it.

13

14

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THE WITNESS: Yes.

16

THE COMMISSIONER: And read it, but
can you remember now?

17

18

THE WITNESS: Yes, I can remember
this quite clearly.

19

20

THE COMMISSIONER: All right, tell us
what you remember.

21

22

MR. PERCIVAL: Q What do you remember
of - did you see Susan Nelles when you went there?

23

A Yes.

24

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H.15

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Q. What did you remember of her emotional state, or her facial features at the time you observed her?

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A. I have no way of knowing what her emotional state was because I don't know her personally. I may have said, maybe two or three sentences in our association on the ward, but I don't know her personally so I can't make any judgment about her emotional state at all. But her facial appearance was rather unusual in that she had no signs of grief.

12

13

Q. Perhaps I can refresh your recollection at the top of page 47, lines 3 to 10:

14

15

16

"Q. And what was her - did you observe her emotional state or her facial features?

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"A. Well she was writing along and I had - she was involved in Pacsai and I knew she had given digoxin before so I was anxious to see what she looked like at this time and she had a very strange expression on her face and she had no signs at all of grief and she had been looking after this child and I thought this was



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"very, very strange that this would
be her appearance at a time such a
terrible thing had happened."

Do I quote you correctly?

A. Yes.

Q. Was that your evidence on
February 17th, 1982, under oath?

A. Yes. As my recollection of that
little episode is still the same, that she didn't
have the appropriate signs of a person under those
circumstances.

MR. PERCIVAL: No further questions,
Doctor.

THE COMMISSIONER: Yes, all right,
thank you. I think we will adjourn now until 2:30.

MR. SCOTT: May we deal with one thing?

THE COMMISSIONER: Yes.

MR. SCOTT: I have no interest in
this issue at all, but this I presume was one of the
reasons why Mr. Sopinka's associate asked to cross-
examine following.

THE COMMISSIONER: Yes.

MR. SCOTT: You see, if the thing is
phased it is not a problem because the order will be
changed in the phase.



H.17

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THE COMMISSIONER: Yes.

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--- Luncheon adjournment.

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--- on resuming.

THE COMMISSIONER: Yes, Ms. Kitley.

MR. BROWN: If I may at this time
give my motion to proceed with leave to cross-
examine Dr. Fowler following the cross-examination
which Mr. Percival conducted this morning.

THE COMMISSIONER: Yes. Well now,
would you like to -- I don't see, does anybody have
any great objection? It is only on the one issue of
what happened.

MR. BROWN: It's on the one issue.

THE COMMISSIONER: The one incident?

MR. BROWN: That's correct, Mr.
Commissioner.

THE COMMISSIONER: Yes, Mr. Young,
do you have any objections? You can sit down because
I am with you, Mr. Brown, so far.

MR. YOUNG: Mr. Commissioner, I wonder
if I might make a brief submission.

Earlier today Mr. Brown mentioned
that they were not in a position to cross-examine at
the earlier stage at the regular time because they
didn't have access to the sort of information that we
did, or at least that is what I gathered from what
he said.



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I would put to you, Mr. Commissioner, most of the evidence that I think Mr. Brown is going to be addressing comes right from the preliminary hearing.

THE COMMISSIONER: Yes.

MR. YOUNG: In fact, they did have an opportunity earlier to speak to those matters.

THE COMMISSIONER: No, but remember it is traditional that you don't raise matters that are against you unless you have to.

MR. YOUNG: Oh, I understand that, Mr. Commissioner, but they might have anticipated that.

My only other comment would be that I wonder if this sort of luxury would be, you know, afforded to others down the road, and I imagine that it will be.

THE COMMISSIONER: Well, yes. I like to keep a moderately even hand. So, I will try to do exactly the same thing for you if it is necessary, but it is on this one issue only, that is, what the doctor saw when he went on Sunday morning at six o'clock or whatever.

MR. YOUNG: Well, as I say, we are not objecting. I just thought I would put that on the record.



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THE COMMISSIONER: Yes, all right.

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Now, do you want to get it off your chest right now or would you rather wait until the end?

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MR. BROWN: No, I would prefer to do it right now, Mr. Commissioner, if no other counsel has objection to that.

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THE COMMISSIONER: Ms. Kitley.

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MS. KITELY: No, that's fine, I will just take my book back.

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THE COMMISSIONER: All right.

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The difficulty about this, though, Mr. Brown, is that some of the other counsel may raise the same issue about the two nurses this afternoon.

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MR. BROWN: Well, I appreciate that and perhaps in light of your comments, Mr. Commissioner, since we only want to go through the exercise once it may be more appropriate that I --

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THE COMMISSIONER: Yes, yes, I think it would be.

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Ms. Kitley.

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MS. KITELY: Mr. Commissioner, before I start I have a request to make, and that is, that yesterday we received in evidence Exhibits 177, 178

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and 179, those being the summaries of the night
schedule of the Ward Chiefs, the Ward Chiefs by
month and the Fellows.

THE COMMISSIONER: Yes.

MS. KITELY: And I am wondering
whether the same sorts of summaries exist with
respect to residents and interns and, if they do,
might they be made available?

THE COMMISSIONER: I don't know the
answer to either of those.

MR. LAMEK: I can only say, Mr.
Commissioner, I have enquired for them and I do not
know whether they are available. I think the Hospital
is trying to find them and, if they are, they will
be provided.

MR. SCOTT: Our best information is
that we would normally have those but they were
delivered up to Atlanta and we haven't got them back
yet. They are in the hands of the Atlanta people.
What they are doing with them isn't entirely clear
but that is where they are.

THE COMMISSIONER: And there wouldn't
be a copy left, you wouldn't have retained a copy?

MR. SCOTT: Apparently not. They
came and took what they wanted.



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THE COMMISSIONER: Oh, well. Well, there you are, Ms. Kately, we will do the best we can.

MS. KATELY: Thank you, sir.

THE COMMISSIONER: We are going to have the Atlanta people eventually, but not for quite a while.

Is there any reason though why Atlanta can't be asked for these?

MR. LAMEK: Not at all. It is the first time I heard that they had them, Mr. Commissioner.

THE COMMISSIONER: Well, somebody, either Mr. Lamek or Mr. Scott will ask the Atlanta people if they will produce these documents.

MR. SCOTT: I will leave that up to you, Paul.

MR. LAMEK: No, you gave them to them.

THE COMMISSIONER: Oh, oh, there is going to be a fight.

Yes, Ms. Kately.

MS. KATELY: If I might deal with Exhibit 179, and I think Dr. Fowler will need a copy of it in front of him.

CROSS-EXAMINATION BY MS. KATELY:

Q. Doctor, am I correct that



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there are really two parts to this exhibit; first
of all, being a schedule which is I think page 3J
and that is the service schedule by month?

A. Yes, yes.

Q. This is the page that I am
looking at, Doctor.

Now, the chart you are looking at,
Doctor, is the monthly service schedule, in other
words, the Fellow who is in charge of a particular
section for a particular month or five or six weeks;
is that correct?

A. Yes, that's correct.

Q. So, for example, we have the
eight Fellows listed on the left-hand side and their
assignments during the year that they were in the
Hospital?

A. Yes.

THE COMMISSIONER: What page are
you looking at for this?

MS. KITELY: Well, I thought it was
J.

MR. SCOTT: Page 6, I think, Mr.
Commissioner, the unnumbered page 6.

MS. KITELY: It is the only one that
is sideways, sir.



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MR. LAMEK: Fifth from the back.
MR. SCOTT: Sixth from the front.
THE COMMISSIONER: Oh, yes, all
right, okay.

MS. KITELY: Q. All right, on the
left-hand side then are the names of the eight
Fellows and on the top are the periods of time that
they were in charge of a particular service.

So, for example, Dr. Contreras
was in charge from July 1st to August 2nd in 4A/B
and again later on for part of the April/May month
further on on the right-hand side; is that correct,
Doctor?

A. Yes.

Q. Now, in looking at this,
it would appear that Dr. Contreras was twice on
4A/4B?

A. Yes.

Q. Initially as I have indicated
and for part of a month later?

A. Yes.

Q. Dr. Schaffer likewise for a
full month and then later a half month?

A. Yes.

Q. Jedeiken once, Heilbut two



AA8

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full months. Am I correct on that, Doctor?

3

A. Yes, that's correct.

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Q. I am wondering whether under Heilbut, given that his second 4A/4B stint is on the right-hand side of the column, whether our copy is just incorrect and he really only had a half a month as well?

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12

A. Well, it is a lady doctor and I think that is just a typing error. I can't be sure but I would think, looking at this schedule, that Dr. Heilbut was on for the whole of that second-to-last period on 4A/B.

13

14

Q. Right. And then Fazal was on two months, namely, January --

15

16

17

A. Yes.

18

19

Q. Actually to be precise he was on from December 1, 1980 to January 11, 1981?

20

21

22

23

24

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A. Yes.

Q. And again from February 23, 1981 to April 5, 1981?

A. Yes.

Q. And so Fazal was the fellow in charge during the activities in the month of March?

A. Yes.



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Q. Then Brand was on a full month in January and then a half month later on?

A. Yes.

Q. And Drs. Su and Ning were never attached to the 4A/4B?

A. Yes.

Q. Then the other part of this exhibit would appear to be a series of on-call schedules starting with August 4, 1980 and ending with April 5, 1981. Am I correct?

A. Which page is this on?

Q. The first page, yes, Mr. Lamek is correct, the first page with the Fellows' call schedule.

A. Yes, starting on July 1st.

Q. It starts on July 1st.

A. Yes.

Q. Yes. And if you follow the pages through you will end up having the on-call schedule until the 5th of April 1981?

A. Yes.

Q. The dates aren't always clear quite frankly. If you look at the page which in my copy is 3J, it would appear to start with the last word, last part of the word 'February' at the



1

2

top and 'ch' for March and 'il' for April.

3

4

Now, if you have located page 3J
and the month of March, Doctor?

5

A. Yes.

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9

Q. Would you agree with me
that in the middle of the page for that month there
are a series of changes. So that Jedeiken is crossed
out on the 1st and 'SH' written in. Would that be
Dr. Schaffer?

10

11

A. I suppose that is. I don't
know, but I suspect that that is what it is.

12

13

Q. Right. And throughout this
month it appears there has been a certain amount of
changing around between doctors?

14

15

16

A. Yes.

Q. Is that standard?

17

18

Q. So, looking at the weekend
of Saturday, the 21st to the 22nd --

19

A. Yes.

20

Q. -- in fact, it should have
been Dr. Schaffer's weekend and Dr. Jedeiken took it?

21

A. Yes.

22

23

Q. Am I correct that of the
eight that were listed on the chart that we initially

24

25



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looked at, they all do the on-call schedule, but as we have pointed out six of the eight did a service schedule?

4

5

A. Yes, that's correct.

6

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Q. Now, I understand, Doctor, that although we don't have the residents' schedules that until January 1981 there were three residents attached to Wards 4A and 4B and that from after January there were four.

10

Does that sound accurate?

11

12

A. I'm not sure. I can't give you any information about that, that may be true.

13

14

Q. Who would be able to give us that information? I understood that from Dr. Rowe quite frankly.

15

16

17

A. Yes.

Well, I guess Dr. Rowe must have had that from his own schedule

18

19

Q. But you are not in a position to disagree with that?

20

21

A. No. Well, I can't agree with it either, I can't make a comment.

22

23

Q. I am going to show you Exhibit 138, Doctor, if the Registrar would give you a copy.

24

25



1
2 During the year, that is from
3 July 1980 to July 1981, was it your personal ex-
4 perience that there was any difficulty with the
5 communication between either the Fellows or the
6 residents and other people in the Hospital? And
7 by communication, I mean language difficulty.

8 A. I don't think that there --
9 I think that there have been some difficulties per-
10 haps, I can't remember specifically which residents
11 and on what occasion, but there have been some
12 discussion about the communication with the residents
13 or with the Fellows or who were responsible for the
14 Cardiac Fellows. There may be problems with the
15 pediatric residents but they are under the direction
16 of Dr. Carver and the medical education.

17 Q. Can I ask you to look at
18 Exhibit 138 that is beside you.

19 A. Yes.

20 Q. In the first full para-
21 graph -- first of all, have you seen this before,
22 Doctor?

23 A. Oh, yes. Yes, I have
24 seen this.

25 Q. Would you look at the first
full paragraph.

A. Yes.



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Q. In particular the last full sentence, and I quote:

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"They spoke of the need for support of relatively inexperienced pediatric residents who are attached to the ward and the problem that has arisen over communication with some of the cardiac subspecialty residents because of language or medical background problems."

11

A. Yes.

12

13

Q. Would you agree with the concern raised in that statement?

14

A. Well, this is a concern of the nurses.

15

16

Q. That's correct.

17

18

A. And I guess that this must have been a concern that was voiced to Dr. Rowe and to me.

19

20

Q. Do you agree with the concerns?

21

22

A. I guess -- well, how can I agree? This is their concern and they are pointing this out.

23

24

25

Q. Perhaps the better way to



1
2 put it would be, did you have a concern about the
3 communication problem?

4 A. No, I didn't. I think
5 probably Dr. Rowe as well, all the people who are
6 cardiac Fellows that we hire, we hire them with the
7 understanding that they can communicate and we were
8 satisfied that they were able to do -- they are
9 properly trained to do medicine and we felt that they
could function in the Hospital.

10 Q. That's at the time of
11 hiring?

12 A. Yes.

13 Q. Yes.

14 Now, Doctor, if I can deal briefly
15 with one of your jobs. One of your jobs as Head
16 of Clinical Services I understood to be liaison
with the nursing staff.

17 A. Yes.

18 Q. And I understood you to say
19 yesterday, and again today, that you were not aware
20 of any concerns the nurses had raised about the
deaths on the ward?

21 A. No, I was aware that they
22 had discussed this but not with me personally but
23 with Dr. Rowe. That was the reason that he got those
24
25



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two conferences in September. I do not remember personally having a deputation to me from nurses regarding this matter.

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Q. But if part of your job was liaison with the nursing staff can you help us with why they would have gone to Dr. Rowe and not to you?

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A. I don't know.

Q. Now, Doctor, if I can deal briefly with the events on March 21st, and I plan not to repeat what you have been asked by assorted other people. What I am really interested in was who was at the Hospital on the night of the 21st of March. This is after you have come back, you have received the call from Jedeiken and you indicated that you are back in the Hospital.

A. The 21st, that is Saturday night?

Q. Yes, this is Saturday night.

A. Yes.

Q. So, you arrived at approximately 8:30?

A. Yes.

Q. And Dr. Carver arrived?

A. Yes.



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Q. Was he there before or

3

after you?

4

A. No, I think he was there

5

ahead of me.

6

Q. Right. You indicated you

7

left about midnight.

8

A. Yes.

9

Q. Did Dr. Carver leave before

10

or after you?

A. I'm not sure.

11

Q. Dr. Mount-Stephen was there?

12

A. He was at the meeting and

13

presumably after the meeting was going about doing
the things that we suggested that he do.

14

Q. And Dr. Costigan?

15

A. Yes.

16

Q. Did Dr. Teperman show up?

17

A. He arrived.

18

THE COMMISSIONER: I'm sorry,

19

Dr. who?

20

MS. KITLEY: Teperman.

21

THE WITNESS: Teperman.

22

THE COMMISSIONER: Oh, Teperman.

23

THE WITNESS: The Coroner. Yes, he
arrived.

24

MS. KITLEY: Q. Yes. Do you

25



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remember when he arrived?

3

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A. Well, I don't remember,
around eleven, 11:15 or something like that.

5

6

Q. I'm sorry, I didn't hear
the last time, 10:15?

7

8

A. I think it must have been
around eleven, thereabouts, or shortly after eleven
on Saturday night.

9

10

Q. Right. And was he still in
the Hospital when you left?

11

12

A. I can't recall whether he was
still there or not. I can't tell you that.

13

14

Q. All right. Was Dr. Ross
Bennett there?

15

16

A. No.
Q. Did you have a conversation
with Dr. Ross Bennett from the Coroner's office?

17

18

19

A. From the Coroner's office
we had a conference there but I don't remember. I
can't recall having a specific conversation with him
outside that meeting.

20

21

Q. I'm sorry, we are still on
the Saturday night meeting?

22

23

24

25

A. Yes. No, no, no, the
Saturday afternoon meeting in the Coroner's office, and



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he was there and I don't remember having any contact
with him since that time, but perhaps I did, I don't
remember that.

4

5

THE COMMISSIONER: I think we were
talking about the night. Did Dr. -- who was it,
Bennett did you say?

6

7

MS. KITELY: Bennett, yes.

8

9

THE COMMISSIONER: Was he there
that night?

10

11

THE WITNESS: The Chief Coroner
was not at that meeting.

12

MS. KITELY: Q. Bennett was the
Chief Coroner?

13

A. Yes.

14

Q. But Teperman was there?

15

A. But Dr. Teperman was there
representing him.

16

17

Q. And was Jedeiken at the
meeting?

18

19

A. I can't remember that. I
think that perhaps he wasn't. If you're talking about
the meeting in Dr. Carver's office on Saturday night,
the 21st, I don't think Dr. Jedeiken was there, but
he might have dropped in because, of course, he was
on duty on the ward and he had clinical responsibilities

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and I'm not quite sure --

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THE COMMISSIONER: Just a moment,
please. We don't allow that, I'm afraid, I'm
sorry. Yes, go ahead.

5

6

MS. KITELY: Thank you, sir.

7

8

Q. Yes, the meeting was in

Dr. Carver's office?

9

10

A. Yes.

11

12

Q. All right.

Was Dr. Freedom there?

13

14

A. No, he was not.

15

there?

16

17

A. Not to my knowledge. I
don't believe so.

18

Q. Was there a pharmacist there?

19

20

A. No. Again, this is a long
time ago, but I don't remember a pharmacist being
there.

21

22

Q. Was there anyone from the
administration of the Hospital there?

23

24

A. No, I don't believe there was.

25



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Q. Was there anyone else there that we might have omitted?

4

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A. Well, the most important of all is the nurse who was, I don't know what you call her, but she is the Head Nurse for the whole Hospital for the night, and I don't know who that is.

7

8

Q. Well, I suggest it was either Cathy Colson or Lynne Johnston.

9

10

Do either of those names mean anything to you?

11

12

A. No, I wouldn't be able to say that.

13

14

Q. Why do you say that that individual, whatever her identity, was the most important of all?

15

16

17

18

19

A. Because she was the liaison to all the wards and this information had to be disseminated quickly to all the wards to explain to them why they were having their drugs locked up and so on.

20

21

Q. Was she present for the entire meeting in Dr. Carver's office?

22

23

24

25

A. I don't remember whether she was there the whole time. I suspect she was but I can't remember for sure.



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Q. Do you know what she was
told to communicate to the people in the Hospital?

4

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A. Well, I presume that she was
there when all this information was gathered for
that memo that was passed around earlier. So, I pre-
sume that this is what she was going to communicate
to all the nurses on the various wards.

8

9

Q. Exhibit No. 165, which is
the confidential memo that we have looked at earlier --

10

A. Yes.

11

12

Q. -- has the time of 10:25
on it.

13

A. Yes.

14

Q. Does that indicate when the
meeting was concluded?

15

A. That's the next day, is it?

16

17

Q. No, it is the evening of
March 21st, 22:25.

18

19

A. Well then, that may well be
the time that the meeting finished.

20

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22

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Q. Was Dr. Teperman there by then or did he arrive after the meeting was over?

A. Well, I guess he perhaps hadn't - I don't think he was there at that time. I don't think he arrived until 11, but this was a long drawn out thing and it went all evening. And as soon as he arrived then he came in with all the people that were there still, which was me and Dr. Carver, and I think that some of the nurses, or the nurse and the residents may be coming in and out but I can't give neat details of that meeting.

Q. Doctor, in Exhibit 165 there is a note after Items 1 to 5 and I am quoting:

"Dr. Fowler has informed the coroner concerning the findings of a digitalis level of 72 on Allana Miller."

A. Yes.

Q. By the "coroner" was that Dr. Teperman or Dr. Bennett?

A. No, the message was left with I think the coroner's office much earlier than that before I came to the meeting. In other words at 8 or something like that.

Q. And I am going on and I am quoting:



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"A request has been made by way of
Dr. Fowler for the heart preparations
of those children who died on 4A/B to
be examined for digitalis levels.
Extractions will be attempted."

Can you explain what that means?

A. I think this was possibly after
Dr. Teperman came, and it was wondered if we could
in some of the specimens of some of the children who
died, that this would be - there was an attempt made
to see what the levels of digoxin were in these
specimens.

Q. Was there any decision about
over what period of time you would be looking at
deaths? It doesn't say all or certain months. It
just says children who died on 4A/4B?

A. Yes.

Q. Were you just going to look
at more recent ones?

A. I would have thought perhaps
recently. I am not quite sure.

Q. Was that done?

A. I think there was an attempt
to do that through the coroner's office and the
chemical people. I have never seen the results of



1
2 that, but I understood that that wasn't successful,
3 as far as I knew.

4 Q. And in terms of the Items 1 to
5 5 that are listed on Exhibit 165, is it your under-
6 standing that Dr. Carver assumed responsibility for
7 having these carried out rather than you in your
8 capacity as Ward Chief?

9 A. Yes. That was my assumption.

10 Q. So if we look to find out whether
11 1 to 5 were done, and by whom and when, we should be
12 asking Dr. Carver rather than you?

13 A. I guess so.

14 Q. Well ---

15 A. I don't have that information.
16 I can't tell you, and it may be that he will be able
17 to tell you, but perhaps the nursing service can also
18 give you help as to whether those things were actually
19 done.

20 Q. You indicated earlier that you
21 didn't think you had been on the ward that night. Is
22 that correct?

23 THE COMMISSIONER: He said he didn't
24 know.

25 THE WITNESS: I didn't remember whether -
I was spending most of my time, so much of my time



1
2 is involved in meetings all the time, and I think
3 I spent most of that evening on the ward. Down in
4 Dr. Carver's office, and I don't remember whether I
5 dropped in the ward or not.

6 Q. Is it fair to say that while
7 Dr. Carver took over the events insofar as Exhibit
8 165 are concerned, that you were still Ward Chief?

9 A. Yes.

10 Q. And as Ward Chief before you
11 left the Hospital that night did you give any
12 consideration to perhaps having special medical
13 coverage on the ward that night?

14 A. No.

15 MS. KITELY: Those are all my questions.

16 THE COMMISSIONER: Yes. All right,
17 thank you.

18 Miss Goodman, are you next?

19 MISS GOODMAN: I have no questions,
20 thank you.

21 THE COMMISSIONER: Mr. Olah?

22 MR. OLAH: Thank you.

23 CROSS-EXAMINATION BY MR. OLAH:

24 Q. Doctor, just following up on
25 Exhibit 165, there is a reference there to heart
preparations.



1
2 Would you explain to me what you
3 meant by that term, "heart preparations"?

4 A. Some of the specimens of
5 children who died with heart disease are maintained
6 in the department for scientific study and review,
7 and that these were available, some of them were
8 available.

9 Q. Would these be maintained in
10 the Department of Pathology?

11 A. Yes.

12 Q. Do you know whether they are
13 maintained on a regular basis or only in some
14 instances?

15 A. I think ---

16 Q. I would like to have your own
17 personal information rather than sort of guessing
18 or conjecturing?

19 A. No, no, I think that on the -
20 in general terms and I can't make any comments in
21 regard to other departments or divisions in the
22 Hospital, but in the Cardiology Division if we
23 have permission for a postmortem we usually maintain
24 the specimen for further studies in the future.

25 Q. By the specimen you mean the
heart itself?



1 A. Yes.

2 Q. What about serum? Is that
3 something that is maintained?

4 A. No. Well, unless there is
5 some question about drugs and that sort of thing,
6 but under ordinary circumstances serum is not
7 maintained.

8 Q. All right. But in every
9 instance in which there was a postmortem examination
10 sample of the heart tissues would have been kept?

11 A. Yes, usually, yes.

12 Q. Now I would like to refer you
13 back to something you testified about yesterday,
14 something I was hoping you could clarify for me.

15 Yesterday at page 6138, at about line
16 14 you said:

17 "...if a pathologist finds something
18 striking at his pathology examination,
19 he naturally would get in touch with
20 the referring physician right away."

21 A. Yes.

22 Q. By "referring physician", that
23 is the physician who is the ward chief at night,
24 during that period of time, or would it be the
25 physician who is primarily responsible for treatment?

A. I would suspect that the two



1
2 physicians would be communicated with, but the
3 primary physician who is sort of attached to that
4 patient during his whole time is the person that
5 must receive all the information.

6 As a courtesy to the ward chief, if it
7 is not the primary physician, is usually given a
8 copy of the appropriate results.

9 THE COMMISSIONER: Just a moment, Mr.
10 Olah. When a doctor orders digoxin level to be taken,
11 is the name of the doctor on the order?

12 THE WITNESS: Yes.

13 THE COMMISSIONER: So the Pathology
14 Department would know who the doctor was who had
15 ordered it? Wouldn't he be the person who would ---

16 THE WITNESS: Well, the digoxin levels
17 are done in the Biochemistry Department.

18 THE COMMISSIONER: Well, wouldn't they
19 know?

20 THE WITNESS: Yes. The ordering
21 physician is given those results always immediately.

22 THE COMMISSIONER: I would have thought
23 he was the person they would report to, not to
24 whoever the cardiologist was in charge.

25 THE WITNESS: Yes. I think in the sort
of thing we are discussing at the moment, the



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communications between the pathologists who have
done the postmortem examination on a child ---

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THE COMMISSIONER: Oh, I see. Yes.

5

All right.

6

THE WITNESS: That communication would
go to the primary physician I think.

7

THE COMMISSIONER: Yes. All right.

8

MR. OLAH: Q. I am still unclear.

9

By "primary physician" you mean the treating or
referring physician?

10

11

A. Each patient that is seen in

12

the Cardiology Division is seen originally by one of
cardiologists and that patient becomes his property,

13

if you like, so his whole time of 20 years in the

14

hospital, he is the primary cardiologist that is

15

involved. And whether the patient is brought into

16

the hospital at various times and has an operation

17

and this sort of thing, this is the primary physician

18

who is given the information. In addition to many

19

other people, but it is a most important thing that

20

he know about it.

21

Q. All right. Well, the question

22

I really want to get to is this: if there was some-

23

thing unusual or noteworthy, that report from

24

pathology would go to the referring physician?

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A. Yes. And that was me because I examined that child when she first came in and saw her in the out-patients and followed her during her whole life.

6

Q. That was Estrella?

7

A. Estrella.

8

9

Q. And we do agree on this point, that the high reading in the serum with respect to Estrella was something unusual?

10

A. Yes.

11

12

Q. So consequently the report from pathology, had there been one, would have been made to you or should have been made to you?

13

A. Well, it was sent to me.

14

15

16

Q. All right. The only thing I understand you received was the preliminary autopsy report?

17

18

19

A. Yes. That is the report of the work of the Department of Pathology in that particular patient.

20

21

22

Q. Well, I understand that, but I thought you testified yesterday that if something unusual was noted then the referring physician would be contacted immediately?

23

A. Yes.

24

25



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Q. All right.

3

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A. If there was something of the order that we are dealing with here, this would be done by phone, orally I am sure.

5

6

7

Q. All right. That is what I am trying to get at. Normally the mode of communication is by telephone?

8

9

A. Yes.
Q. Because the preliminary autopsy report takes usually six to eight weeks to prepare?

10

11

A. Yes, that is correct.

12

13

Q. Now in this case we agree that a finding of 72 nanograms is something unusual?

14

15

16

A. Yes.
Q. Do we not? And consequently any report under the mode of reporting that we have discussed should have gone to you by telephone?

17

18

A. If this was felt to be a true reading ---

19

20

Q. Well ---

A. - by the pathologist.

21

Q. That is correct. I take it you never did receive such a phone call?

22

A. Not to my knowledge.

23

Q. Do you know if anyone else did

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within the Cardiology Department?

A. No, I can't say for sure. I don't know.

Q. Was the first time you heard at all about the Estrella level when you received the preliminary autopsy report?

A. Yes.

Q. Do you find it unusual, Doctor, that you weren't contacted by telephone in this case?

A. It the pathologist thought that was a true specimen I am surprised that he didn't get in touch with me. But as we have gone over many, many times, and every witness has done so, it was found that this was not a correct value and so it wasn't reported to me.

Q. Well, the question I had was whether you were surprised that you weren't contacted by telephone?

A. No, because I also had the same reaction when I finally did see the result as the pathologist did when he received it.

MR. OLAH: Thank you, those are all the questions I have, Mr. Commissioner.

THE COMMISSIONER: Thank you, Mr. Olah.
Mr. Labow?



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MR. LABOW: With your permission,
Mr. Commissioner, Mr. Tobias is going to proceed.

THE COMMISSIONER: Yes. All right.
Mr. Tobias?

MR. TOBIAS: May I have your indulgence
for one brief moment, Mr. Commissioner.

MS. GOODMAN: Mr. Commissioner, I
might note that there is someone still taking pictures,
and I believe you indicated to the young lady before
she was not to take pictures in the hearing.

THE COMMISSIONER: Well, it is the kind
of pictures that are being taken, the kind that
distract me are the witness, and I wasn't being
distracted by this young lady so I guess I wasn't
going to complain about it.

But I understood, now, Mr. Lamek, you
are the expert ---

MR. LAMEK: I am the expert? My goodness.

THE COMMISSIONER: Yes. What arrangements
have you made?

MR. LAMEK: Well, there has been no
prohibition against taking photographs; merely indeed
the requirement that they not be obtrusive in their
doing so.

THE COMMISSIONER: Yes.



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MR. LAMEK: And that is the guideline
that has got to be applied every time it occurs I
suppose.

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THE COMMISSIONER: Are not the pictures
that are taken by the cameras, aren't they available
to everybody?

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MR. LAMEK: No.

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THE COMMISSIONER: They are not?

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MR. LAMEK: No. If you are talking
about still photographs, no, they are not. No pool
arrangement at all.

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THE COMMISSIONER: Well, that is the
advance of science. The television seems to be able
to take them without our knowing even whether they
are being taken or not and when it is for the news-
papers they seem to make a click and everybody has
to stand around and that is what is distracting. I
don't know. Doctor, are you sensitive to this sort
of thing?

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THE WITNESS: Well, I have - it doesn't --

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THE COMMISSIONER: It doesn't worry
you?

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THE WITNESS: I prefer not to be
photographed but I can go along with it.

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THE COMMISSIONER: I am not going to



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make a blanket prohibition because before I do, it is just like digoxin. Someone will discover some way of taking still photographs that don't make a noise.

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MR. LAMEK: That indeed can be done.

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THE COMMISSIONER: Yes. Well, I am leaving it at that. If it can be done unobtrusively we will get along, but when somebody stands up, moves to the front or even leans over and makes an exhibition of the taking of the picture, that is when I find I am distracted, and I am - I was going to say I was paid to listen. I am sorry to say I am not paid, but other than that I am supposed to listen.

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MR. SCOTT: Vested interest in the picture described as Chief Justice Grange. Well, I have no objection to it - I take it zoom lens are forbidden.

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THE COMMISSIONER: Well, I haven't - I haven't forbidden zoom lens. I haven't forbidden any of these things.

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MR. SCOTT: I have raised that the first day and it is going to happen sooner or later.

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THE COMMISSIONER: You see I am inclined to wait until the problems arise. I know that is called procrastination in some circles, but so far the conduct has been very good and



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exemplary in fact, and therefore I don't want to
create a row where there is no need to create one.
So I started today for the first time to create a
row because the young lady did stand up and somebody
did it once before and I objected and it stopped.
So it then started again and now I have objected again.

However, the taking of pictures by
itself is not objectionable.

Right. Now, did that give you enough
time, Mr. Tobias?

MR. TOBIAS: Yes, Mr. Commissioner, it
gives me more than sufficient time.

CROSS-EXAMINATION BY MR. TOBIAS:

Q. Dr. Fowler, I would like to
start by asking you about an exhibit that was
introduced in your evidence in chief by Mr. Lamek
the other day. Exhibit 175 which I believe was an
article that you co-authored with Thornback on Sudden
Unexpected Death in Children with Congenital Heart
Disease.

A. Yes.

Q. I have one question regarding
something that appears in paragraph two of that study.

You indicated, and I quote:

"To avoid the controversy surrounding



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"'cot death' in infancy certain measures
were taken".

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THE COMMISSIONER: Are you reading?

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MR. TOBIAS: Yes, I am reading directly
from the paragraph starting just above the title
"Methods" on page 2.

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THE COMMISSIONER: Yes. All right.

9

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MR. TOBIAS: Q. Could you advise me
when you refer to cot death in that article, you
are referring to sudden infant death syndrome?

11

A. Yes. SID.

12

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Q. Can you tell me just so that I
have an understanding of it what measures did you
take in your study to eliminate the effect of cot
death on your results? How did your method avoid
the controversy surrounding cot death?

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A. We studied only people who were
over one year of age, and the majority of I think
generally cot death or SIDS occurs under one year
of age and that was the only way that we just simply
didn't study those children and did not get into the
whole problem of SIDS and so on being involved with
some of our cases with heart disease. It was just
a matter of selection of age that we were studying.

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Q. Indeed with respect to sudden



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infant death syndrome it is generally accepted that not only do sudden infant death occurrences happen in the first year of life but in fact they tend to decline in terms of number of episodes after four months; is that not correct?

A. Yes.

Q. The peak is reached between one and four months?

A. Yes, I think that is true.

Q. Now I would also like to ask you about Exhibit 165 which was introduced into evidence earlier which is a confidential memo dated Saturday, March 21st, 1981, and the last paragraph of that memorandum reads as follows:

"Dr. Fowler has informed the coroner concerning the findings of a digitalis level of 72 on Allana Miller. A request has been made by way of Dr. Fowler for the heart preparations of those children who died on 4A/4B to be examined for digitalis levels. Extractions will be attempted."

What does it mean when it refers to "heart preparations"?

A. I think we discussed that just



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a few minutes ago.

We took the infant, the heart tissue and gave it to the Forensic Science people to attempt to make estimates of the degree of, the amount of digoxin in the tissue.

Q. And when you refer then or when the memo refers to extractions be attempted ---

A. Yes.

Q. - that is referring to extractions of heart muscles?

A. Yes. That is right.

Q. All right. Sorry, go ahead.

A. And in actual fact Dr. Freedom is our liaison, as you know, with the Pathology Department and he was more involved in that, having that done, than I was.

Q. All right. And I take it that the testing that is contemplated by that memorandum of heart tissue ---

A. Yes.

Q. - for digitalis levels, was not done in the Hospital nor the Pathology Lab of the Hospital but that was done by the Police using the Centre for Forensic Science?

A. I think that they started to do



1
2 this, and you would have to ask them, but I understood
3 that they had other people attempting to do this as
4 well, in other labs across the continent, but I am
5 not sure about that.

6 Q. Okay. In fairness I won't
7 ask you about that.

8 You are satisfied, though, that the
9 testing wasn't done by the Hospital; it was done by
10 the Police?

11 A. Yes.

12 Q. Okay. Now regarding the medical
13 record of Jordan Hines, Mr. Lamek indicated to you
14 yesterday, page 1 of that record is a letter authored
15 by you?

16 A. Yes.

17 Q. And addressed to a Dr. A. S.
18 Dworak, dated March 17, 1981.

19 MR. COHEN: What is the exhibit?

20 MR. TOBIAS: The exhibit number, Mr.
21 Commissioner, is Exhibit 103 and perhaps Mr. Registrar
22 if the witness had a copy of the chart in front of
23 him it might be helpful.

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Q. Now Doctor that you have the record in front of you I wonder if you might examine page 1, which is a photocopy of the letter I have just referred you to?

A. Yes.

Q. My question is this, does anything on the face of that copy of the letter help you at all with respect to the date that that letter was dictated or transcribed?

A. Well, the date at the top of the letter is the 17th of March.

Q. All right, and can I take it from that that in all probability it was typed on March 17th?

A. It might be, but my secretary is sometimes a day or two late in doing all her letters, it might not have been the 17th, I am not sure.

Q. I take it when you say a day or two late, she may date something after she has typed it, she rarely back-dates it I would assume?

A. No, no.

Q. In other words all I am trying to say is we can safely assume, can we not, that the letter was probably not typed in any event



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after March 17th?

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A. No.

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Q. It may have been typed a

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day or two before, but it is unlikely that it was
typed a day or two after, do you agree with that?

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A. Yes.

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Q. What I'm really interested

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in is does anything from that document itself, or

9

from any of your own personal records, or your own

10

recollection assist you in helping me to determine

11

the date of dictation of that letter?

12

A. No, I think that I - maybe

13

there is something else here.

14

Q. Perhaps Doctor to assist

15

you let me put the question more directly. Do you
recall the date of dictation?

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A. No I don't recall that, but

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I rather suspect that Dr. Schaffer who was the

18

cardiac fellow on the ward that month dictated the

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summary, the discharge summary which you see on page
31.

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Q. Yes.

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A. And the usual arrangement

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in our department is that the cardiac fellow who is

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on duty in the ward dictates a summary like that.

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CC-3

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Q. Yes.

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A. As soon as that is dictated he gives it to me if I am the Ward Chief at the time, and I write what is called a covering letter, which I suspect that is the 17th is the covering letter.

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Q. Yes.

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A. That he had dictated this, and when a child dies it is one of the rules in the Hospital that the fellow or the person responsible has to dictate something within 24 hours of the death. So I suspect that he died on the 8th, Dr. Schaffer dictated that summary that you see in 31.

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Q. Yes.

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A. And then that goes through the typing pool, and then it comes back to my office and I read that to be sure that I agree with that. Then I put this little covering letter on the top of that one and send it to the referring doctor. Obviously at the time that I dictated this letter here I was not aware of any problem as far as digoxin was concerned.

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I also was not aware of the concerns about SIDS at the time that this letter was



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2 dictated. As you can see in the second to last
3 sentence I said:

4 "I am sorry about the death of this
5 infant and we will have to defer
6 the final diagnosis until the
7 post mortem examination is
8 complete."

9 Q. Perhaps it might assist you
10 Doctor if you refer to page 32 of the record, the
11 medical record of Jordan Hines which is the
12 signature page, which Dr. Michael Schaffer signs the
13 death report.

14 A. Yes.

15 Q. And down at the bottom left-
16 hand side about half way down the page.

17 A. Yes.

18 Q. There appears 13.3.81.

19 A. Yes.

20 Q. Underneath the initials of
21 the typist?

22 A. Yes.

23 Q. Can we safely assume, is it
24 fair to assume that that document was probably typed
25 on March 13th, 1981?

A. I think that is a reasonable



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assumption.

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Q. And since your letter to Dr. Dworak is dated March 17th, 1981, can we be confident that you would have received Dr. Schaffer's report and dictated the letter of March 17th, 1981, some time between March 13th, 1981 and March 17th, 1981?

A. Yes, I think that is a fair assumption.

THE COMMISSIONER: I am sorry, did I understand you to say it was the policy or direction of the Hospital that they be completed within 24 hours of death?

THE WITNESS: No, the discharge summary had to be dictated.

THE COMMISSIONER: But not necessarily typed?

THE WITNESS: No, no, that is a remarkably fast turnaround of time as a matter of fact.

THE COMMISSIONER: Five days?

THE WITNESS: Yes. That is an urgent matter to get around, and I am afraid this is the way hospitals operate.

THE COMMISSIONER: I guess we are not



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alone in this problem I would have thought five days was a long time to get it out, but that isn't in your experience.

THE WITNESS: Well of course, as you well know if we have urgent information to go to the family doctor we use the telephone always.

MR. TOBIAS: Q. Doctor in a sense Mr. Commissioner has anticipated my next question. Nothing from the record which appears on pages 31 and 32 assists us with determining the date on which Dr. Michael Schaffer dictated the death report, that is something we can't find out simply by looking at the death report, isn't that correct?

A. Yes, that is true.

Q. Now at the date - perhaps before I ask you the next question, if I might refer you to page 28 of the medical record of Jordan Hines, the Preliminary Autopsy report appears at that page.

A. Right.

Q. You will note that that document appears to be dated March 8th, 1981. What I am referring to is the second line down, the information appearing the furthest to the right of the page date March 8th, 1981.



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A. Yes.

Q. Now I asked Dr. Rowe and he wasn't able to help me and perhaps you can. Is March 8th, 1981 as referred to as the date of the Preliminary Autopsy report, is that necessarily the date that the report was typed, or is that the date the autopsy was done?

THE COMMISSIONER: We have been though this several times and it is the date of the autopsy, it means absolutely nothing as far as the document is concerned. Now perhaps I have spoiled it because you may want that answer from Dr. Fowler, but we have had it several times.

MR. TOBIAS: No, no, it matters not where I get the answer from as long as I am now clear on it.

THE COMMISSIONER: Dr. Rowe has indicated that he thinks from now on we will have a date somewhere on autopsy reports, but it is too late for our purposes.

MR. TOBIAS: That is fine Mr. Commissioner.

THE WITNESS: No, it says at the top, it says the date of death is March 8th, and the date of the autopsy is March 8th too. You see, I



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think March 8th, the second line down ---

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MR. TOBIAS: Q. Yes.

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A. --- is the date of the

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autopsy which was five hours after death.

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Q. Fine.

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THE COMMISSIONER: Our complaint is
it doesn't say so, that's all, that's the basis of ---

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THE WITNESS: Well no, but I am

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sure anybody in the fetology department will you tell
you that is what that means.

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THE COMMISSIONER: Well anybody in
the legal or judicial game would have some trouble
with it.

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THE WITNESS: Oh, I see.

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MR. TOBIAS: Q. In any event Doctor
the point that I am trying to make ---

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MR. SCOTT: I take it doctors are

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interested in autopsies and we want to know the date
of the report and the doctors want to know the date
of the autopsy.

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THE COMMISSIONER: That is right.

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MR. SCOTT: We are working with

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different equipment.

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MR. TOBIAS: Q. In any event

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Doctor the point seems to be from an examination of

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the Preliminary Autopsy report there is no way we can determine accurately what date it was typed and therefore we can't be absolutely sure, or whoever it was being referred to would have received it, isn't that true?

A. Yes.

Q. Particularly on page 30 I notice the report is signed by Dr. L. E. Becker but there is no notation at all on that page, and correct me if I am wrong of any date.

A. It doesn't appear - no, there isn't a date.

Q. Now I understand that the final autopsy report which was Exhibit 103A appears to bear the same dates on page 1 as the Preliminary Autopsy report. I would like to direct your attention to page 2 of Exhibit 103A. You will see on that page the signature apparently of Dr. L.E. Becker, and then on the extreme left-hand side of the page, the last thing that appears about half way down is the pen written date it would appear 25.3.81?

A. Yes.

Q. Can we assume that was the date that Dr. Becker signed it, is that a safe



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assumption, or do you know?

A. No, I wouldn't assume that I think you would have to get Dr. Becker to tell you what that means, that is a little vague way off in the corner I have no idea what that date means.

Q. All right, that seems fair. Now, at the time that your letter of March 17th, 1981 was prepared, had you had an opportunity, to your recollection, to actually see the Preliminary Autopsy report of Jordan Hines.

A. I can't tell you. In the letter I sent there were some things, some comments I made about that, and I simply say that I have to defer the final diagnosis until the post mortem examination is complete. I cannot tell you whether when I wrote that that I had this document in my hand. I would suspect, if your suspicion is correct and that this wasn't done until the 25th, that I didn't have the final post mortem report in my hand and I may not even have had the Preliminary one, but I cannot tell you that.

This may be just hearsay, because of course Dr. Vera Rose was heavily involved in this patient as well and perhaps you should ask her about this when she takes the stand.



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Q. Now I understand that at the time that the letter was prepared you can't be certain whether you had actually seen the Preliminary Autopsy report or not, and I understand the difficulty. Do you have any recollection as to whether or not at the time of your letter of March 17th, 1981 was dictated, you have had any discussions with the pathologist, specifically regarding the results of the preliminary post mortem examination done on Jordan Hines?

A. No, but I think, and you will have to check with Dr. Rose, but I think that she herself actually saw the specimen and did have some discussion with the pathologist, because she was involved, she was on duty and was very anxious to see what the preliminary findings were.

Q. And do you recall whether you had any specific discussions with Dr. Vera Rose regarding anything the pathologist might have told her, or anything she might have seen from the autopsy, specifically regarding the results of the preliminary post mortem examination of Jordan Hines?

A. I can remember a conversation with her reporting that she looked at the heart itself and found no - she was concerned that this



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child had an inflammation of heart muscle or myocarditis, and she and the pathologist looking at the heart itself didn't see gross evidence of such an inflammation in the heart. I can remember having a discussion with her about that and making the whole question of what the true cause of this child's death much more complicated than she had thought originally.

Q. Now you have told us that you can't be sure whether or not you have seen the preliminary autopsy report, and you don't recall whether or not you had spoken to the pathologist, but you do recall having some discussion with Dr. Vera Rose regarding the lack of any gross evidence of viral infection affecting the heart muscle?

A. Yes.

Q. You told me before, and you seemed to be quite sure and I would like to ask you to think about it again, that at the time your March 17th, 1981 letter was dictated you had no suspicions at that time regarding any problem with digoxin; and you had no information at that time regarding the missed - SIDS theory. Do you remember telling me that a few moments ago?

A. I don't remember either of those causes for the death being in my mind at the



CC-13

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2 time that I did that covering letter.

3 Q. Perhaps in response to my
4 earlier questions I might assist you just somewhat
5 by actually referring to the document. I asked
6 you whether you had had discussions with the
7 pathologist. Your letter seems to indicate Doctor
8 that you did, because the second sentence says:

9 "I have discussed the case with
10 the pathologist and we have not got
11 a satisfactory diagnosis yet."

12 Do you see that reference?

13 A. Yes.

14 Q. So we can assume that there
15 was some discussion directly between you and the
16 pathologist before this letter was prepared?

17 A. Yes. I am not quite sure
18 whether that is via Dr. Rose.

19 Q. All right ---

20 A. It may be that I was saying
21 that, you know, I should have said that discussion
22 with the pathologist had revealed no satisfactory
23 diagnosis. I can't remember the specific discussion
24 with the pathologist about this particular case.

25 Q. Looking at the letter again
Doctor, you do go on to say, and I am puzzled by



CC-14

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this reference:

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"Anatomically the heart was

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completely normal. There were many

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eosinophils throughout many organs

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which is not explained. There was

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a fresh hemorrhage around the base

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of the brain and the brain is being

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And those findings appear very clearly at page 28

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of the record in the Preliminary Autopsy report?

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A. Yes.

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Q. Looking at the document now

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and thinking about that information and the things

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that you did note, can you now assist me on how you

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had that information in your possession at the time

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this letter was dictated? How did you come to

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know that on autopsy the heart was normal. How

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did you come to know regarding the fresh

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hemorrhage around the base of the brain, and the

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fact that the eosinophils throughout many organs,

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or that they were there throughout many organs and

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the fact that that particular factor was not

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explained?

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A. Well, that would suggest

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either I had the preliminary report, or that I



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actually did discuss it with the pathologist.

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Q. Is it fair to assume Doctor, because of the detail in the letter regarding those findings, that you probably didn't gain that information in a passing conversation with Dr. Vera Rose, but probably in direct conversation with the pathologist?

A. I suppose one could say that that is reasonable.

Q. You also go on to say: "I am sorry about the death of this infant and we will have to defer the final diagnosis until the post mortem examination is complete." So clearly at the date of this letter you knew that there were further investigations that would be made and further results that you were awaiting before talking about a diagnosis, is that also correct?

A. Yes.

Q. Now in light of what we have just determined regarding the amount of specific detail of information you had, and the fact that you probably discussed it with the pathologist, can you now help me as to whether or not at this



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date the pathologist, or Dr. Vera Rose, or anyone else with information regarding the post mortem findings, have made any mention to you whatsoever of the SIDS theory or the missed-SIDS theory?

A. As I mentioned before I don't remember those details specifically but I would have suspected that if, had there been a discussion about this that I would have put that in my covering letter.

Q. What troubles me is this Doctor, you would agree with me, and I take it now you have seen the Preliminary Autopsy report several times, Mr. Lamek took you through it in a great amount of detail yesterday in your direct-examination.

A. Yes.

Q. Do you agree with me that basically the Preliminary Autopsy report poses no more than a question, it doesn't attempt to give an answer because in the opinion of Dr. Becker he wasn't sure what the cause of death was?

A. Yes.

Q. And isn't the major finding in fact his suggestion that he has found certain things which definitely make missed-SIDS a possibility?

A. Yes.



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Q. And that is specifically what he intends to investigate further?

A. Yes.

Q. All right. So, that is clearly his major finding. What I am troubled by is this, Doctor. Assuming that you did discuss the preliminary findings with the pathologist in the amount of detail that you would have required in order to dictate your letter of March 17th, '81, isn't it very, very unusual that in that kind of detailed discussion the question of SIDS would not have been raised and you would not have been made aware of it?

A. Yes, I think that is unusual.

Q. All right.

A. And I can't explain it.

Q. You have no explanation for that seeming anomaly?

A. Yes.

Q. All right. Now, I take it it is obvious from the letter that there is no mention in your March 17th, 1981 letter specifically of SIDS or missed-SIDS?

A. No.

Q. All right. And I suppose that we have to assume that it is at least very possible



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regarding how strange it may seem that you just
didn't know about it at that time?

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A. Yes, that's conceivable.

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Q. All right. When did you know
about it?

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A. Well, I think that when I had
to review the whole case in order to discuss with the
parents when I had an interview with the parents
some time later, and I can't remember the time of that
interview, but I had an interview at that time with
the parents and with Mr. Snedden's office to discuss
with them the findings of these things and at that
time I became aware of this diagnosis.

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Q. All right, thank you, Doctor.

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A. And I of course discussed it
with the parents.

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Q. Thank you, Doctor. Perhaps,
Mr. Commissioner, this might be an appropriate time
to take the afternoon break?

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THE COMMISSIONER: Yes. Can you give
us some indication of how much longer you think you
will be?

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MR. TOBIAS: If you only sit until
4:30 I will clearly be the balance of the afternoon.
I may have some ---

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THE COMMISSIONER: Well, we not only will sit until 4:30 but we have to quit at that hour because I have a -- I don't know why I should confess my private life but I have a function I have to go to at that time.

MR. TOBIAS: No, I understand. If I am going to be realistic at all in my estimate it is clear that I am going to require to go on again in the morning, I do have some areas I wish to cover.

THE COMMISSIONER: Does that cause you any problem, Mr. Brown, tomorrow, you will be here?

MR. BROWN: I will definitely be here, Mr. Commissioner.

THE COMMISSIONER: Yes, all right.

MS. CRONK: If I may, Mr. Commissioner, just before they break. As you know, our next witness is Dr. Vera Rose. It had originally been anticipated she would be called this afternoon. That clearly hasn't happened and isn't going to happen.

THE COMMISSIONER: No, you anticipated she would be called tomorrow and I said have her available for this afternoon, so, it is all my fault and not yours.

MS. CRONK: Well, having abbreviated



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that part of the discussion, Mr. Commissioner, I wonder if I could get some estimate from counsel as to the balance of the time in the morning so we don't unduly inconvenience Dr. Rose.

MR. TOBIAS: I would think, Mr. Commissioner, and I am going to err on the side of saying that I will be longer than I will be, I think I could finish ---

THE COMMISSIONER: Well, just take some time off what your estimate is.

MR. TOBIAS: Fair enough. I would think I should be able to conclude within an hour and a half tomorrow morning. So, by the time of the mid-morning break.

MR. SCOTT: I told Dr. Fowler he would be out of here at 3 o'clock this afternoon. I am going to look like a dunce.

THE COMMISSIONER: Well, I sort of thought so too. I don't know, is this all about the Hines baby?

MR. TOBIAS: Yes, it is, Mr. Commissioner.

THE COMMISSIONER: Yes, all right. Well, no, you are entitled to do that.

MR. LABOW: While we are on the



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subject, Mr. Commissioner, I would not expect to be finished for at least an hour tomorrow and possibly two hours.

MS. CRONK: We may be looking at Monday.

THE COMMISSIONER: We may be, we may be.

MS. CRONK: Thank you, sir.

THE COMMISSIONER: Of course you have no idea what is going to be asked but what sort of re-examination do you have?

MR. SCOTT: I have one question and I am not going to ask it until I speak to Dr. Fowler because I don't know what the answer is.

THE COMMISSIONER: I see, all right.

MR. SCOTT: So, I may have none.

MR. TOBIAS: We have also left Mr. Shanahan out of our estimates.

THE COMMISSIONER: Well, Mr. Shanahan I suspect won't have any, but I may be wrong.

MR. SHANAHAN: I have no questions. I have looked at the records and he hasn't dealt with the children that I'm interested in.

THE COMMISSIONER: Yes, Miss Chown, do you have any questions?

MS. CHOWN: At this moment no, Mr. Commissioner.



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THE COMMISSIONER: Mr. Lamek?

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MR. LAMEK: Perhaps 15, 20 minutes,

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no more.

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THE COMMISSIONER: Well, I certainly

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think Dr. Rose will have to be available tomorrow

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morning but perhaps I think you can safely say at

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least that she doesn't have to stir herself until
after 11:30.

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MS. CRONK: Thank you, I will speak

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to Dr. Rose.

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THE COMMISSIONER: Yes, all right.

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Well, we will take 15 minutes.

13

--- Short recess

(2)

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--- Upon resuming:

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THE COMMISSIONER: Yes, Mr. Tobias?

16

MR. TOBIAS: Thank you, Mr. Commissioner.

17

Q. Dr. Fowler, we seem to have at

18

least established that regardless of what you had

19

before you when you dictated the letter of March 17th

20

and regardless of how you came to have the information

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contained in the letter, it was fairly obvious by
the letter that at that date you were aware of the

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fact that the preliminary autopsy results had failed
to establish a satisfactory cause of her death?

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A. Yes.

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Q And that basically there was not much more that you could add at that time until further post mortem examinations were completed, is that correct?

A. Correct.

Q All right. And it has also been established that in your letter you did not at that time, March 17th, 1981, specifically have information, or it would appear that you didn't have specific information regarding SIDS because you didn't mention it in the letter?

A. That's right.

Q And you would agree with me that that would have been one of the major points you would have wanted to raise with the referring physician?

A. Yes.

Q Can you tell me what was your understanding at March 17th, 1981, regarding what the further post mortem examination would involve? You used the phrase:

"We have to wait until the post mortem examination is complete".

What was it specifically that to your knowledge still had to be done?

A. I think I was thinking of



DD.8

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2 microscopic sections of the brain. The letter would
3 suggest that we already had some of the sections from
4 the post mortem but I think that I probably was
5 thinking more in terms of microscopic examination of
6 the brain and of course this would be a reasonably
7 important matter to sort out because we still were not
8 clear as to what the mode, what the cause of death
9 was and it was conceivable that there might be some
10 brain malformation.

11 Q Right. Now, I understand both
12 from my reading of the preliminary and the final
13 autopsy report and from the evidence of Dr. Rowe that
14 Dr. Becker was quite concerned at the presence of
15 arrhythmia?

16 A Yes.

17 Q Would you agree with that?

18 A Yes.

19 Q All right. And in fact, and I
20 believe Mr. Lamek put this question to you yesterday,
21 it was really the presence of the arrhythmia that
22 caused Dr. Becker to believe that SIDS was merely
23 a possibility and required further investigation?

24 A Yes.

25 Q Because it was not a finding
that he would expect to come up with in a case of SIDS?



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Do you agree with that?

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A. Yes.

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Q. All right. I also understand

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from reading the preliminary autopsy report, and

6

again from the evidence of Dr. Rowe, that one of the

7

things Dr. Becker intended to do was a study of the

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conducting system?

A. Yes.

9

Q. And that that study of the

10

conducting system would involve taking numerous

11

slides of heart tissue and doing very exhaustive and

12

very time-consuming studies on that tissue?

13

A. Yes.

14

Q. Is that also correct?

15

A. Yes.

16

Q. All right. Now, is it fair to

17

say that at the time you dictated your letter one of

18

the things that you also were waiting for then was

19

the tests on the conducting system. Was that also

20

not something very permanent in your mind?

A. Yes.

21

Q. All right. And that would have

22

been, even if you are right and you didn't know

23

about SIDS, wouldn't you also agree with that?

24

A. Yes.

25



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Q Because, after all, you had to
be aware of the arrhythmias?

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A. Yes.

5

Q And you had to be aware of the
clinical status of the brady and tachycardia episodes,
the unexplained apnea and clearly one of the things
that you as a cardiologist would consider was
conduction problems?

8

9

A. Yes.

10

Q So, it would have been very
important in your view to have completed that kind
of a study?

12

13

A. Yes.

14

Q Do you agree with that?

15

A. Yes.

16

Q All right. Now, you also told
me before that it was not communicated immediately,
and by immediately I'm talking about March 17th, 1981
or immediately thereafter, to Mr. and Mrs. Hines,
that SIDS was a suspected cause?

19

20

A. Yes.

21

Q And I believe you were telling
us just before the break that some time later you
were required to meet with Mr. and Mrs. Hines in
order to discuss your findings and advise them of
what you thought?

22

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A. Yes.

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Q. And I believe Dr. Rowe made it

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fairly clear that at some point, and I think that was

5

the weekend of March 21st, the police investigation

6

got started and in effect stopped the investigation

7

by the Hospital into Jordan Hines' death in its tracks,

8

to use a colloquialism. Is that your understanding

9

as well?

A. Yes.

10

Q. All right. Do you recall at

11

what time - let me ask this. Do you recall if at

12

any time before today anyone from the Hospital has

13

ever communicated to Mr. and Mrs. Hines their theory

14

that this was a SIDS or a missed-SIDS episode?

15

A. Yes, I did that personally at

16

an interview that I had with them in Mr. Snedden's

17

office.

18

Q. All right. Do you recall

approximately when that was?

19

THE COMMISSIONER: Excuse me, Mr.

20

Tobias. In whose office?

21

THE WITNESS: Mr. Snedden, who is

22

the Superintendent of the Hospital.

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MR. TOBIAS: I think it is Douglas

24

Snedden, Mr. Commissioner.

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THE COMMISSIONER: Yes, all right,
thank you.

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MR. TOBIAS: Q All right. Do you
recall when that interview took place?

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A. No, I can't remember. I think
I might be able to find out. I may have some notes
as to when that occurs but I can't remember when that
was.

9

10

Q I take it that you keep a diary
of your appointments, your schedule?

11

A. Yes.

12

Q All right. Then perhaps tonight
you might refer to that?

13

A. Yes.

14

15

Q In order to assist me as to
when that meeting took place?

16

A. Yes.

17

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Q Now, I realize that you have
given me your undertaking that you will make further
investigations and get me the date but perhaps allow
me to ask you this. Do you think that your meeting
was in calendar '81 or do you know, do you have any
estimate?

22

A. I have no idea when that was.

23

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Q All right. Do you know if at

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the time of that meeting you had at that time yet become aware of the results of the samplings done on the tissue, the post mortem tissue of Jordan Hines and the results in terms of the dig. level?

A. Yes, yes, I was aware of that at that time. Of course that was out of my hands and this of course is a very difficult thing when we are dealing with legal or, you know, cases with the coroner because it interferes with the normal relationship between parents and children who have died and the police had a lot of information that was never communicated to me at all.

Q. All right.

A. But perhaps eventually, but certainly during the time when I was required to discuss these matters with the Hines I didn't know what was going on, I didn't realize that he had been exhumed and the results of that investigation and so on. But I knew the levels, the dig.levels.

Q. All right.

A. So that we were obliged to communicate with them the digoxin levels, but I think that the coroner perhaps had told them that beforehand but we arranged to have an interview and at that time I reviewed the chart and discussed with them the



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possibility that this was a missed-SIDS and that the digoxin problem was not solved.

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Q All right. Now, just so that we don't get confused. It is my understanding and correct me if I am wrong that the first results in terms of dig. levels on Jordan Hines were obtained on a preserved tissue which had been preserved in Klotz solution and which had been assayed approximately three months after death?

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A Yes.

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Q Is that your understanding as well?

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A I don't know that.

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Q All right, you have no information. Is it your information, because it is my understanding that it was after those dig. levels had been taken and after the authorities were aware of the results that the body of Jordan Hines was exhumed and then samples were taken from exhumed tissue and assays were run and further levels were obtained?

21

A Yes.

22

Q Are you aware of that?

23

A No, I don't know any of that story.

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Q All right. But you do recall, and please correct me if I'm wrong it is critical that I understand this, that at the time you had your meeting with Mr. and Mrs. Hines in Mr. Snedden's office, at that time you were aware of the dig. levels found in postmortem tissue on Jordan Hines?

A. No. I was aware of some dig. levels. Now, I wasn't aware of all the investigation that was going on in the forensic laboratory.

Q All right.

A. All I knew was that there was a dig. level that was very high and that also we had the theory about SIDS.

Q All right. Now, I want to be clear on this. It was your understanding at the time of that meeting that you aware of the dig. level obtained on Jordan Hines, not just dig. levels generally in other children?

A. Yes. Oh, no, no, I am talking about ---

Q You are talking about Jordan Hines.

A. But I didn't know or I am not sure where this came from or anything but I was aware of the fact that there were high levels of dig. found and I don't know whether they were serum tissues and



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so on, because of the fact that I wasn't privileged to all the things that were going on in the investigation of him.

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Q. All right. Now, with respect to the particular conversations at the meeting , and I don't mean word for word because I doubt that you kept notes and I realize that the meeting took place a long time ago, but you have indicated to me generally that you had discussions with the parents regarding the dig. levels?

11

A. Yes.

12

13

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Q. And you told them that that was a factor that was there and you didn't know what it meant and it was unexplained?

15

16

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Q. But you also at that time revealed to them that it was the view that missed-SIDS was a distinct possibility?

18

A. Yes, yes.

19

20

Q. All right. So, there was a discussion of both factors, is that correct?

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A. Well, it is not missed-SIDS. If you are alive it is missed and if you are dead it is SIDS.

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Q. It's SIDS.



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A. All right.

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Q. All right. In fact, the

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reference in the autopsy report while we are on the

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point to missed-SIDS is just an indication that part

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of the history of this child were apnea periods, loss
of colour?

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A. Yes, requiring resuscitation

8

by the mother.

9

Q. Yes.

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A. So, after that was over that

11

was missed-SIDS.

12

Q. Correct.

13

A. And then he died and he got SIDS.

14

Q. The next episode was when he

died and that was SIDS, not missed-SIDS?

15

A. Correct.

16

Q. All right, fine. So, there

17

was discussion of both points by the parents?

18

A. Yes.

19

Q. Now, after that meeting - let

20

me ask it this way. At the time of the meeting what
was your view regarding the cause of death of Jordan
Hines?

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A. I was unable to be sure which

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of these two modes of death was present and I

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communicated that to the parents and they were upset at the fact that we didn't have a definite answer. This is unfortunate because it would have been much easier for them to deal with the whole situation if there was a definite answer as to why the child died.

THE COMMISSIONER: Doctor, was this at the meeting?

THE WITNESS: At the meeting with the parents.

THE COMMISSIONER: That's the meeting that you're talking about?

THE WITNESS: Yes, yes, yes.

MR. TOBIAS: Q. Just so we have the chronology in the proper perspective, Doctor. Your first opinion is given on March 17th, '81, and at that time what you are telling Dr. Dworak is that as of the date of that letter you don't know what the cause was?

A. Yes.

Q. Some time thereafter you became aware of SIDS but you still weren't convinced?

A. Yes.

Q. You then had a meeting with the Hines after you already had knowledge of high dig. levels in the child and at that time you still didn't know which of the two was the cause?



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A. Yes.

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Q. All right. Now, can I take it

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that some time after that meeting you came to accept

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the SIDS theory as the cause of death?

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A. No, I think that I have had

7

the feeling after reviewing and discussing the case

8

with many people, including Dr. Bain and so on, that

9

I think that I leaned towards that explanation, but

10

I would not say that I rule out the possibility of

digoxin intoxication.

11

Q. All right, I think that is a

12

fair comment, but I want to be very, very clear on

13

this point so that the questions that I ask you later

14

make some sense.

15

It is my understanding that today

16

you think it quite likely that it was SIDS?

17

A. Yes.

18

Q. And that is basically what you

told Mr. Lamek yesterday?

19

A. Yes, yes.

20

Q. All right. But you are

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modifying that now, are you, or you are telling me

22

now that you haven't ruled out digoxin toxicity?

23

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A. Yes, this is less likely but --

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Q. Less likely and you lean towards

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SIDS but that's still a distinct possibility?

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A. And I think it depends on a lot

6

of pharmacology again.

7

Q. On the outcome of the pharma-

cological debates?

8

A. All the work that they do, and

9

whether that can be satisfactorily concluded so that

10

we know definitely one way or another, then if they

11

are quite sure that this is not dig. intoxication,

12

then I am happy to say - not happy but --

13

Q. I understand.

14

A. -- that he has SIDS as the

explanation of his death.

15

Q. I understand. So that it is

16

obvious to say it is only common sense that if you

17

haven't ruled out dig. toxicity --

18

A. Yes.

19

Q. -- then you are not completely

20

satisfied even today with the SIDS explanation?

21

A. Yes.

22

Q. But you do lean towards it and

see it as more likely?

23

A. Yes.

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Q. Than the other? And would I also be correct in assuming that given all the information available to you, your discussions with Dr. Vera Rose, with Dr. Rowe --

A. Yes.

Q. -- your clinical observations of the child, your knowledge of his history, your knowledge of the pathology findings?

A. Yes.

Q. And your knowledge of the subsequent police investigation in some of those findings?

A. Yes.

Q. And your general knowledge about the debate regarding the reliability of the readings --

A. Yes.

Q. -- is it fair to say today that you are satisfied that all other causes other than digoxin toxicity and SIDS have been ruled out? It is one or it is the other in your view?

A. Well, I mentioned this to somebody else about another case. There is nothing that is one hundred percent, I can't say that - there might be something else come up, but I think it is likely one or the other and I lean towards SIDS.



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Q. All right, that is fair. You

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can't rule out the unknown.

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A. No.

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Q. He might have died from some-

6

thing that hasn't even been discovered?

7

A. Yes, of course.

8

Q. The point is that on the basis

9

of your medical knowledge and all the information you
have --

10

A. Yes.

11

Q. -- it is likely either digoxin

12

toxicity or SIDS?

13

A. Yes.

14

Q. And you right now lean towards

SIDS?

15

A. Yes.

16

Q. Now without asking you when you

17

came to have that view because it may be very difficult

18

to recall - I am only interested in this: at the point

19

that you felt that SIDS was the more likely possibility

20

were the parents at that point told that in the view of

21

yourself and Dr. Rowe that that was the more likely

22

possibility?

23

A. No. The last time I discussed

24

the child's death with the parents was that meeting

25

in Mr. Sneddon's office, and we had the two



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2 possibilities, and I found them very difficult to
3 communicate with and I have had no communication with
4 them since, and I am always open to discuss deaths
5 of any infant at any time with the parents if they
6 wish to.

7 I don't have a final answer, and if I
8 had a final answer perhaps I might go and speak to
9 them and say this is now what we find is actually
10 the cause of the death.

11 Q. All right. At the date of your
12 meeting with the Hines family, your meeting now with
13 Sneddon.

14 A. Yes.

15 Q. Do you recall whether the Hines
16 family at that time were satisfied with your
17 explanation?

18 A. No, of course not.

19 Q. All right. And obviously they
20 wanted to get the riddle solved, probably more than
21 you did and the police did?

22 A. Yes.

23 Q. All right. Do you know if
24 following that meeting the Hines family enquired of the
25 hospital or of you directly as to whether there was
any further information regarding which it was?



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A. No.

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Q. SIDS or dig. toxicity?

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A. No. They have never made any -

5

they have never approached me. They may have talked

6

to someone else in the hospital, but in this situation

7

the coroner's office is really directing this

8

controversy. And they, as I say, they have information

9

that I don't, and we have referred the parents to the

coroner's office.

10

I have not had personally any discussion

11

with them since that time.

12

Q. All right. Now in summary then

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you have no knowledge of any direct enquiries by the

parents?

14

A. Not to me, no.

15

Q. Not to you. All right. Well, I

16

take it that you are also saying that to your state of

17

knowledge you don't know - no one else has told you

18

that they enquired at the hospital, have they?

19

A. Well, they are very - you know,

20

they are very upset by this and they might very well

talk to other people.

21

Q. I understand.

22

A. But they never talked to me.

23

Q. I understand, Doctor, but I am

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not asking you to speculate about whether they might or might not. But I am saying do you have any direct knowledge --

A. No.

Q. -- from something anyone else in the hospital has told you as to their enquiries?

A. No.

Q. Okay. Fine, and you also told me, and I am just trying to summarize so that I completely understand your evidence, that you haven't made any further communications to them because you are still not sure?

A. That is true.

Q. Okay. Fine.

Now you said yesterday in responding to Mr. Lamek's question, and I would like to read you the exchange.

It appears, Mr. Commissioner, at page 6091 of Volume 32 of the daily transcripts.

THE COMMISSIONER: 6091?

MR. TOBIAS: Yes, sir.

Q. The question was this, Dr. Fowler:

"Q. Do you agree with his --"
and Mr. Lamek there is referring to Dr. Rowe -



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"with his current view of the likely
cause of death of Jordan Hines was
sudden infant death syndrome?

A. I think this quite likely, and
I think Dr. Bain's opinion also is
based on the final pathology as
reported by I believe it was Dr.
Becker.

Q. Yes?

A. I think that was the pathologist,
and I think that was the final thing
that Dr. Bain felt was very suggestive,
and then in retrospect, of course,
looking over the history and so on
this would fit in with - as the
cause."

Now you recall giving that answer?

A. Yes.

Q. And the thing that struck me about
it is the following: you are referring there to the
opinion of Dr. Bain?

A. Yes.

Q. Now I asked Dr. Rowe and I think
I am fairly summarizing his evidence, and if I am not
I am sure his Counsel will correct me: I asked Dr. Rowe



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just how central in his view the report and the opinion of Dr. Bain was in convincing him that SIDS was the more likely explanation. And Dr. Rowe's response was that it was very central.

A. Yes.

Q. And he was relying very heavily on the judgment of Dr. Bain and on Dr. Bain's report, and in fairness on other information obtained in the pathology study and according to his knowledge of the history of the child.

A. Yes.

Q. Do you share that view? Is your belief that SIDS is the more likely scenario heavily dependent upon Dr. Bain's opinion?

A. I think it is very difficult to know where all the little bits of information are stored up together and to help you come to a judgment.

I agree that Dr. Bain is a world authority in pediatrics, and I have great faith in Dr. Bain, and he was the outside-inside arbiter, if you like, with all these cases.

In other words, he is not in the cardiology department so he did assess these as if he was an outside person and gave this report. And that is a very important thing for me knowing his experience



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and judgment.

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And I also have the pathology report as well has been discussed, and I don't know how much my decision comes from one or the other.

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Q. Well, Doctor, in fairness let me try to assist you.

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A. Yes.

Q. The clinical history of the child?

A. Yes.

Q. The information that the parents can give you about how he was at home?

A. Yes.

Q. The hospital records from North York General. Your own views of the child seen in a clinical setting while you were treating him?

A. Yes.

Q. The pathological findings?

A. Yes.

Q. The Bain report and his opinion?

A. Yes.

Q. And the results of the police



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2 investigation, the dig. readings. That is basically
3 the information you have got to work with?
4 A. And the opinion of Dr. Rowe.
5 Q. And the opinion of Dr. Rowe.
6 A. Yes, of course, this is another
7 very important --
8 Q. But do you agree those are the
9 basic sources of your opinion?
10 A. Yes, I think that is true.
11 Q. Now at the time you already told
12 me that you weren't satisfied with SIDS as an
13 explanation at all, and that was back in March of
14 1981.
15 A. Yes.
16 Q. At that particular time you
17 certainly had the history of the child.
18 A. Yes.
19 Q. You had the North York General
20 Hospital's records. You had your own clinical
21 observations. You had at least at very minimum the
22 preliminary autopsy results. And yet you still
23 weren't satisfied with SIDS. Correct?
24 A. Yes.
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Q. And the only piece of information you would have obtained thereafter would have been Dr. Rowe's opinion, Dr. Bain's opinion and the Bain report, of course?

A. Yes.

Q. And the information on the dig, levels?

A. Yes.

Q. Is that also not correct?

A. Yes, I think that is true.

Q. Isn't it fair to say, doctor, that it is not that difficult for you to tell me just how central to your being convinced of the likelihood of AIDS Dr. Bain's findings were?

A. If you want me to put them in 1, 2, 3, as Dr. Bain, Dr. Rowe and Dr. Becker?

Q. All right, and when we say Dr. Bain, what we are really referring to is not only your conversation with him --

A. Yes.

Q. -- but his report?

A. Yes.

Q. Because after all I can't believe, I can't conceive that he would have made any revelation to you that was so convincing that it might lead you to believe AIDS was the more likely



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explanation and then not include that same information
in his report. Do you agree with that?

A. Yes.

Q. Now, you said yesterday,
and this is really why I ask the question, doctor:
your own words were:

"I think this is quite likely and
I think Dr. Bain's opinion also is
based on the final pathology as
reported by I believe it is Dr.
Becker."

It was you putting the emphasis
on Dr. Bain and you were seeming to say, if I am
reading you right, that that opinion can be looked
at in a very credible sense because after all Bain,
when he made his report, had the final pathology?

Do you agree with my reading?

A. Yes.

Q. All right.

Now what I am concerned about, and
very curious about, is what final pathology are you
referring to? What further information did Dr. Bain
have when he made his investigation that you didn't
already have?

A. I think that he took the



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elements that you outlined in detail and put it together as a very experienced, sensible clinician, and he came to this conclusion knowing -- and I know that he isn't in the department and has no bias in terms of assessing all these findings and so on, and so that I think he perhaps has no other information that I have, but I respect his opinion and I feel that this is the most likely explanation.

Q. Doctor, what I am concerned about is this: you chose the words. I didn't. And the words you chose were "final pathology".

A. Yes.

Q. As opposed to preliminary pathology. What did you have in mind using that phrase? Was there any further information to your knowledge that Dr. Bain had?

A. No, I don't think it has -- I don't know what further there has been done. In other words, I don't know whether serial sections of the conducting tissue were ever done, and if they were I have never seen reports of those.

Q. Doctor, did you not indicate to Mr. Lamek yesterday in your evidence in chief that you at least as of yesterday knew that the microscopic study on the conducting system, that very onerous task



EE2/4

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we were discussing before --

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A. Yes.

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Q. -- had not been done?

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A. Yes.

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Q. And as a matter of fact,
doctor, you were somewhat surprised when Mr. Lamek
told you that. Am I correct?

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A. Yes.

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Q. All right. So you are telling
us that up until yesterday you didn't even know
whether the final studies had been done?

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A. Yes.

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Q. All right. Up until yesterday
had you read Exhibit 103 which is the final pathology
report?

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A. I can't tell you whether I
have actually read the final one or not. I may have.

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Q. Doctor, you have read the
evidence of Dr. Rowe?

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A. Yes.

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Q. And you know that Dr. Rowe
told us during his examination by Mr. Lamek that in
fact the final autopsy report on Jordan Hines and
the preliminary autopsy report on Jordan Hines are
identical?

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EE2/5

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A. Yes.

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Q. They are identical documents.

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The only difference between them is that one says
"preliminary" and the other says "final".

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THE COMMISSIONER: Yes, and one
of them has "25.3.81".

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MR. TOBIAS: That is correct. One
of them has "25.3.81" on it.

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Q. You are aware of that?

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A. Yes.

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Q. So I think it is fair to
say, it is only common sense, that in the real sense
of the term there is no final pathological report.

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Dr. Becker never did give us further
information. He never got to do his further studies.

15

Don't you agree with that?

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A. Yes.

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Q. So what final pathology were
you referring to yesterday?

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A. Well, I guess we don't, I
don't have that. That is a mistake.

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Q. So in fact what you are
saying is that it is your respect for Dr. Bain, who
is an eminent authority in Pediatrics, and your faith
in his analysis which convinces you that SIDS is the

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more likely cause of death?

THE COMMISSIONER: And --

MR. TOBIAS: Q. Not based on any new information that Dr. Bain had that Dr. Becker didn't have?

A. No. I mentioned that a minute ago, that he took a lot of the elements that we have in front of us and he, because of his skills in diagnosing disease in infants, he put them together and felt that SIDS was the likely explanation.

The reason I put Dr. Bain ahead of Dr. Rowe is because he is an outside expert whose opinion I respect, and then you have to accept also the fact that Dr. Rowe then reviewed all the information that was available and came to the conclusion that SIDS was the likely explanation.

And those are two very important bits of evidence to make me feel that this is likely SIDS.

MR. TOBIAS: All right.

Now, I think I can finish the next point before 4:30, Mr. Commissioner.

THE COMMISSIONER: Yes. All right.

MR. TOBIAS: Q. You also say at



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page 6091, Volume 32, referring again to the pathologist and the final thing that Dr. Bain felt was very suggestive, and then you said:

"...and then in retrospect, of course, looking over the history and so on, this would fit in with -- as the cause."

Now, I assume the history that you are referring to there is the child's course at the Hospital, North York General and at home?

A. At home, yes.

Q. Could you tell me, doctor, what specifically in that child's history do you feel point to SIDS as an explanation? How does the history seem to support that?

A. The fact that he had, at an appropriate age, an apparent cardiac arrest.

Q. Where did that happen?

A. That happened in his bed at home. His mother resuscitated him. And that to me is a very potent point to suggest that he is a mis-SIDS at that time.

Q. All right. So I believe you are familiar with the fact that Dr. Rowe, in reviewing the history of this child, placed a great



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deal of reliance on the fact - as a matter of fact
when I asked him how central it was, his own words,
and I quote:

"The child would have died had
she not interrupted the episode."

A. Yes.

Q. Do you recall Dr. Rowe
giving me that evidence?

A. Yes.

Q. So obviously Dr. Rowe feels
that is very central and you feel that is very
central.

Now let's talk about this incident.

As I understand it the mother came
into the child's room and the child was turning a
blue colour and having difficulty breathing.

Is that your understanding as well?

A. This is my understanding.

Q. And that she picked the
baby up and, in picking the baby up, shook it and at
that point it started to breathe.

So you agree with me there was not
any dramatic medical massive intervention at that
particular time? Obviously there couldn't have been.
It happened at home.



EE2/9

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A. Yes.

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Q. There was no administration
of drugs.

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A. No.

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Q. There was clearly no
electrical shock administered to the heart to get
it pumping again.

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A. No.

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Q. There was no cardiopulmonary
resuscitation undertaken. She was able to arouse
the child and the child then seemed to get over the
episode. Do you agree with that?

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A. Was there not an episode
of mouth-to-mouth resuscitation at that time?

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Q. Doctor, I could ask you that
question. Is it your information that there was
an episode of mouth-to-mouth resuscitation at home?

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A. Yes.

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Q. All right. Perhaps you
might direct me in the medical chart of Jordan
Hines.

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A. Perhaps I am incorrect. It
may be that...

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Q. Doctor, may I suggest this
to you: I am about to take the appropriate break in



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about one minute and thirty seconds. Perhaps tonight you could familiarize yourself with the chart and in the morning advise us as to what specific information led you to believe there was an episode of mouth-to-mouth resuscitation.

Perhaps I could just ask two short questions before we conclude for the day, and that is this: I would take it, although you haven't addressed it, that the other things you are relying on in the history are the periods of apnea at North York General Hospital?

A. Yes.

Q. And the arrhythmia?

A. Yes.

Q. The tachy/bradycardia?

A. Yes.

Q. Other than that incident at home and those other clinical observations --

A. Yes.

Q. -- was there anything else particularly suggestive in the child's history which would be consistent with SIDS?

A. I can't remember his birth weight, but --



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Q. May I assist you, his birth weight was not a low birth weight.

A. What was it?

MR. LAMEK: Eight pounds 14 ounces.

THE WITNESS: I am sorry, he is big, all right, thank you Mr. Lamek.

MR. TOBIAS: Q. And he was I believe full term, so again I pose the question, other than those episodes of apnea and the arrhythmias and the incident at home was there anything else in that child's history which --

THE COMMISSIONER: The arrhythmia is something.

MR. TOBIAS: When I say arrhythmia, Mr. Commissioner, perhaps I am using the phrase too loosely, what I am really referring to are the episodes of brady/tachycardia.

Q. Other than those factors Doctor, was there anything else that you felt was particularly indicative in the child's history SIDS?

A. No, I think those are the important things.

MR. TOBIAS: All right. Perhaps that might be an appropriate time to finish for today, sir.

THE COMMISSIONER: Thank you, Doctor.



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2 MR. BROWN: Mr. Commissioner, I
3 hesitate to rise again at the end of the day but if
4 I may I have been advised that Mr. Sopinka will be
5 conducting the cross-examination tomorrow that you
6 have granted us leave to conduct of Dr. Fowler.

7 THE COMMISSIONER: Yes.

8 MR. BROWN: And in that respect part
9 of the cross-examination will deal with why Dr. Fowler
10 said what he did during his testimony at the
11 preliminary inquiry. That may well turn on a statement
12 that Dr. Fowler gave to the Police. We would request
13 that before we have our opportunity to cross-examine
14 tomorrow, that any statement that Dr. Fowler made to the
15 Police in the course of their investigation be made
16 available to us so that can be read before the cross-
17 examination is conducted.

18 Now I appreciate we are going to run
19 into difficulties between Phase 1 and Phase 2, but
20 in fairness, Mr. Commissioner, I would submit that if
21 the issues are going to be raised at this point --

22 THE COMMISSIONER: Yes Mr. Young, have
23 you any comments?

24 MR. YOUNG: Well Mr. Commissioner, I
25 anticipate these sort of problems and I think is a
matter that will be discussed in Phase 2. Mr. Lamek



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2 has a copy of the Police file and has for many months
3 and if he was so inclined to --

4 THE COMMISSIONER: Are we under any
5 obligation to keep it?

6 MR. YOUNG: I don't think that aspect
7 of it --

8 MR. LAMEK: Mr. Commissioner, I have
9 taken the position that I have made available to anyone
10 whom I propose to call as a witness at the time of
11 preparing him to give evidence any statements which I
12 knew he made to the Police, I thought it was
13 appropriate to have him remind himself of those
14 statements and I will continue to do that. Providing
15 of witness statements to the Police of persons other
16 than the witness certainly departs from anything that
17 has been done so far. There may be nothing
18 intrinsically wrong with it, I don't know.

19 THE COMMISSIONER: Yes. What have
20 you to say Mr. Strathy?

21 MR. STRATHY: Well it goes without
22 saying this is not a trial and I can't see what public
23 purpose is served by withholding from some Counsel
24 copies of statements that the Police have had and are
25 obviously using in, cross-examining the various
witnesses, and Mr. Lamek obviously has and is using in



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2 examining the witnesses, why can't we have this sort
3 of thing?

4 THE COMMISSIONER: Yes.

5 MR. STRATHY: I don't see any reason
6 why it has to be secretly kept from us.

7 THE COMMISSIONER: Yes. Mr. Young?

8 MR. YOUNG: I am not sure,
9 Mr. Commissioner, that we necessarily have to deal
10 with this matter at the present time because as I
11 pointed out earlier our cross-examination was limited
12 to the evidence that was given in front of His Honour
Judge Vanek.

13 THE COMMISSIONER: Yes, but the point
14 that Mr. Brown is taking is the evidence that was
15 given before Judge Vanek may be at odds with what he
16 said to the Police.

17 MR. YOUNG: Well, I don't know that
18 that is necessarily what Mr. Brown is saying, if that
is the case I would like to hear it.

19 THE COMMISSIONER: Well he can't tell
20 you he hasn't seen the statement, you can tell me, you
21 have it.

22 MR. YOUNG: Well Mr. Magee conducted
23 a rather thorough examination of Dr. Fowler.

24 THE COMMISSIONER: All right. I wonder
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if I can put it this way to you and to Mr. Lamek. I will make a final ruling with respect to this matter tomorrow morning, but at the moment I am leaning very much in favour of ordering the production of the statement.

MR. TOBIAS: I am sorry Mr. Commissioner, could you repeat that, I missed the last five or six words when you trailed off.

THE COMMISSIONER: Well I always, as I warned you I mumble when I am not too sure of myself. I am at the moment leaning towards the Brown position. I think that this document should be produced and I will make the final decision at any rate you will have it available tomorrow morning, you won't shred it or any of those things?

MR. LAMEK: Mr. Commissioner, I will give it to anyone you want me to give it to.

THE COMMISSIONER: All right, if you can come up with some good argument why it shouldn't I will certainly listen to it tomorrow. All right, 10 o'clock tomorrow morning then.

--- Whereupon the hearing was adjourned until Thursday, September 15th, 1983 at 10:00 a.m.

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